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LEGAL AND LITERARY DISCOURSE ON THE JURY IN THE VICTORIAN PERIOD

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LEGAL AND LITERARY DISCOURSE ON THE JURY IN THE VICTORIAN PERIOD

by

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Dissertation

Presented to the Faculty of the Graduate School of

The University of Texas at Austin

in Partial Fulfillment

of the Requirements

for the Degree of

Doctor of Philosophy

The University of Texas at Austin

May 2015

Acknowledgements

This project was made possible by the assistance of many people. First, I would like to voice my great appreciation for my committee chairs, Carol MacKay and George Christian. Carol's graduate seminar on Victorian literature reignited my fascination with Dickens, and without Carol's mentorship, I would not have discovered my love for Trollope. George helped me to refine my law and literature methodology and provided great support for my interdisciplinary goals. The rest of my committee has also offered invaluable assistance. Allen MacDuffie, Linda Ferreira-Buckley, and Neville Hoad provided important recommendations and comments throughout the writing process.

My colleagues from graduate seminars and graduate conference workshops have been enthusiastic listeners instrumental in my development of confidence in my project. Finally, the completion of this project would not be possible without the support and love of my family.

Legal and Literary Discourse on the Jury in the Victorian Period

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The University of Texas at Austin, 2015

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This dissertation critically examines representations of the jury in Victorian novels. I argue that studying the jury, as a concept and in practice, offers a unique window to both the social and literary vision of Victorian novelists. The second half of the nineteenth century saw a decline in the use and cultural perception of the jury, and the controversy surrounding the jury's competency to administer justice implicated broad social questions of education and class that shaped the formation of British identity. The Victorian debate over the future of the jury was a public conversation occurring in legal treatises, the press, and in literature. By engaging in the debate over the future of the institution of the jury, Victorian novelists forge their own "juryman's guidebook" to educate the readers, the potential jurors of England. In addition to social questions, I examine how the novel uses features of the jury—the jury's role as a "finder of fact" and the jury's narrative silence—as narrative techniques. Novelists explore the jury's role as a "finder of fact" while negotiating their own role as "finder of fact" by balancing legal realism with legal imagination in fictional legal narratives. Additionally, examining the jury's narrative silence is essential to understanding each author's legal imagination. By analyzing the narrative techniques and descriptive strategies surrounding the jury in the

works of Anthony Trollope, Charles Dickens, Wilkie Collins, M.E. Braddon and Henry Rider Haggard, this project demonstrates how the Victorian cultural anxiety over the future of the jury is captured in literature across genres. The responses of these authors to the jury debate range from ambivalence to concrete visions for legal reform; however, each of these authors, through serious engagement with a legal controversy, writes the law.

Contents

Chapter One

The History of the Jury and its Place in the Victorian Cultural Imagination

It is impossible to either appreciate the subtleties of the jury as depicted in the works of Anthony Trollope, Charles Dickens, Mary Elizabeth Braddon, Wilkie Collins, and Henry Rider Haggard or recognize the larger cultural significance of these authors' depictions of the jury without an understanding of the unsettled and hotly disputed cultural and legal status of the Victorian jury. At the time of the novels considered in this dissertation, English trial practice was converging around a system in which a jury comprised of men was charged with evaluating evidence and deciding questions of fact as presented through witness testimony, lawyers and the judges' instructions to the jury and arriving at a unanimous verdict. William Blackstone, writing in the eighteenth century when government oppression under the Stuarts had not faded from the cultural memory, heralded the jury as "the palladium of English liberty" for its "protection against the violence and partiality of judges appointed by the Crown" (qtd. in Devlin 159). Indeed, juries were an important safeguard against the government in the seditious libel trials of the late eighteenth century. By the Victorian period, optimism had risen regarding the beneficent nature of the government, leaving the jury's future uncertain. Juries had always been the subject of jesting, but by the nineteenth century, juries did not enjoy broad cultural approval and the jury system as an institution was under attack. Questioning the future of the jury was part of the reform sentiment of the nineteenth century and the debates surrounding the jury provide a unique lens for examining

tensions over class and public faith in democracy. Issues such as juror qualifications, feeding jurors, and unanimity requirements, that seem like long-resolved technicalities to modern scholars, implicated broad questions of, *inter alia*, national character and the cultural memory of older systems of justice. The Victorian debate over what a jury should be and what it should do was carried forth by a broad stratum of cultural participants, including legal commentators, newspaper editorialists, satirists, and novelists. This chapter sets forth the many threads of the Victorian-era debate over the proper form and role of the jury, which, as discussed in the following chapters are reflected and developed further by Victorian novelists.

"THE PALLADIUM OF ENGLISH LIBERTY"

The origin of trial by jury is the subject of debate. What can be confirmed is that the jury emerged from common law tradition rather than positive law or legislation. Before and after 1066, the "frank-pledge" operated as a communal police system under which each man was a pledge for the good behavior of every other man in his "tithing," originally comprised of a group of ten of his peers. Every free man of age had to be in a tithing. Legal historians that place the origins of the jury as the Grand Assize, cite an oft-quoted translated passage from Glanvill, author of the first legal treatise not written before 1187:

> The Grand Assize is a royal favour, granted to the people by the goodness of the king, with the advice of the nobles. It so well cares for the life and condition of men that every one may keep his rightful freehold and yet avoid the doubtful chance of the duel, and escape that last penalty, an

> unexpected and untimely death, or, at least, the shame of enduring infamy in uttering the hateful and shameful word ["Craven"] which comes from the mouth of the conquered party with so much disgrace, as the consequence of his defeat. This institution springs from the greatest equity, Justice, which after delays many and long, is scarcely ever found in the duel, is more easily and quickly reached by this proceeding. The assize does not allow so many essoins as the duel; thus labor is saved and the expenses of the poor reduced. Moreover, by as much as the testimony of several credible witnesses outweighs in courts that of a single one, by so much is this process more equitable than the duel. For while the duel goes upon the testimony of one sworn person, this institution requires the oaths of at least twelve lawful men. (qtd. in Thayer 42)

The difference between the jury described by Glanvill and the Victorian jury hinges upon the transmission of knowledge; Anglo-Saxon tribunals used their members' own knowledge and jurymen acted as witnesses, whereas Victorian juries judge evidence to decide questions of fact. Victorian legal historians seized upon this distinction in roles to question the institution's age. For example, in *History of Trial by Jury* (1852), William Forsyth disputes the connection between the nineteenth-century trial by jury and the Norman tribunal system; he sees the distinction between modern juries as judging evidence and early juries as acting as witnesses to be controlling (153). In *A History of English Law* (1903), William Holdsworth takes issue with seventeenth century conceptions of the thirty-ninth clause of the Magna Carta representing the principles of

trial by jury, for the jury was “as yet in its infancy” (214). He does argue that the thirty-ninth clause in the Magna Carta exists as a thirteenth-century effort to express the values of a free trial. The difference between the early juries and the modern Victorian system was viewed as so vast that "it might be deemed at first sight the result of violent revolution rather than natural development, but it is all the more natural for this very reason" (318). Yet, as evidenced by an 1859 article from *The Law Magazine and Law Review*, the evolution of the jury system inspired "real national affection" and made it "thoroughly English" (“Trial by Jury” 318).

Englishness in the eighteenth century was connected to success in war, but by the mid-nineteenth century a sense of cultural belonging was developing based on a vision of England as a modern state (Connors and MacDonald 2). The importance of the law to national character has been traced to the legal treatises on common law of Sir Edward Coke in the early seventeenth century (Mandler 12). According to Peter Mandler, at the time of Coke’s writing, the law would have still been viewed as tool of punishment not an emblem of a nation’s investment in collective decision-making. Nonetheless, Coke’s technical treatises on the common law were instrumental to the process of developing the law’s centrality to English identity. As compared to statutes, common law as an uncodified law made by judges could be viewed as reflecting the values and customs of the people. Coke’s work positioned the law “as a principal support of the very idea of an English national character, as well as supplying some of its chief ingredients" (12).

If the law was central to British identity, then trial by jury, despite a decline in the public’s estimation, remained an important part of the British trial system in the Victorian

period. Coroners' inquests required the largest number of juries; however, the number of criminal trials with juries was also high: in 1880, there were 26,588 coroners' inquests and 14,770 criminal trials. In civil trials, juries remained popular in tort cases and composed 23% of all jury trials in England and Wales (Lobban "The Strange Life" 192). Described as "one of England's most important invisible exports," (Mandler 10) the jury system was embraced throughout Europe in France, Prussia, Belgium, Greece, and Portugal during the eighteenth and nineteenth centuries.

In keeping with the premise that "the whole establishment of King, Lords, and Commons and all the laws and statutes of the realm, have only one great object, and that is, to bring twelve men into a jury-box," (Forsyth 375) the trial by jury in the nineteenth century was not only providing a service for the litigants but also serving a wider constitutional purpose. Tocqueville believed that the jury system made every citizen look outside of his or her self to serve the community and in this way prevented undue self-interest. G. Rochfort Clarke, in *Unanimity in Trial by Jury* (1859), supports Tocqueville, and details the valuable lessons the juryman receives: "he is learning to fix his attention; to weigh evidence; to exercise calm and impartial judgment; he is obtaining valuable hints for his own guidance; and preparing to become a more active and intelligent defender of the law" (11). For Clarke, the educational benefits of a jury trial not only reach the individual jurors but also the people who attend a trial. Clarke says that even an attempt to understand a completed legal argument is an educational experience, and since the spectators enjoy the performances of the attorneys, the experience "is more ennobling than a pantomime and quite as amusing" (11). As I argue in Chapter 5, Haggard's

representation of a juryless trial in *Mr. Meeson's Will* emphasizes the empowerment of the audience in the courtroom.

The jury earned its reputation as "the palladium of English liberty" through exercising political power against government oppression. Since the ruling in Bushell's Case (1670), juries had been protected from a judge's coercion of the acceptance of a predetermined verdict; however, the rights of juries remained vague beyond this standard, and the common law developed based on popular opinion and political need. For example, the question of whether juries were able to decide both questions of fact and law was a major point of debate during the seditious libel trials of the late eighteenth century. In seditious libel cases, the determination of whether a publication was libelous or not was a question of law; therefore, juries were instructed to issue guilty verdicts after answering the question of fact—whether the defendant was the author of the publication in question (Oldham 28). Joseph Towers argues that juries should decide questions of fact and law in libel cases. Towers reads the Magna Carta's provision that no man should be punished without "the lawful judgment of his peers" to mean that the jury has the power to judge both fact and law (11). Juries already decide questions of law in murder trials; a jury guide from 1682 states that "all that the judges do is but advise, though in matter of law, and it is the jury only that judges one guilty, or not guilty of murder" (12). According to Towers, the judge instructs the jury rather than dictates the outcome and this tradition should stand in libel cases. It is a matter of fact whether a book is false, scandalous, malicious, or seditious. The jury should not be satisfied with the judge telling them that a book or paper is seditious or malicious libel; rather, they should be convinced

of it themselves (24). Some juries in eighteenth century trials for seditious libel refused to return guilty verdicts even after determining that the defendant was the author of the publication in question; "With apparently comfortable consciences, these jurors took the law into their own hands" (Oldham 29). In this way, the jury is implicated in an issue central to British identity—freedom of the press. As Towers suggests, "How ridiculous is it to pretend that the people of England have the liberty of the press, if it be admitted, that the judges can pronounce any book a libel that they think proper?" (Towers 28). If juries were required for the benefit of the parties to the lawsuit, then this necessity was exemplified by the politics of eighteenth-century seditious libel prosecutions.

Despite far-reaching complaints about the ability of the jury to achieve proper verdicts, high-profile cases existed in the nineteenth wherein the jury lived up to Blackstone's ideal of the jury as the "palladium of English liberty." For an example of public celebration over the jury's power as a check against government, one can look to the proceedings of the coroner's inquest on Robert Culley. A policeman, Culley was killed during the Coldbath Fields Riot of 1833. Workers had met in Coldbath Fields to peacefully discuss their grievances, only to be met by brutal force from the police. During the riot, Culley was fatally stabbed and the Government pressured the coroner's jury to return a verdict of "guilty" against the accused, George Fursey, of murder. Instead, the famous jury, known to history as the "memorable Calthorpe Street Jury" issued a verdict of "justifiable homicide" (Greene 5). The jury realized the high degree of responsibility involved in the coroner's investigation; according to Charles Greene, "The jury, most of whom took notes of the whole proceedings, appeared to take a more

lively interest in the investigation than is usually evinced by persons in their situations" (28). The gravity of the case is also witnessed through the jury's inability to reach a unanimous verdict. The jury began deliberations at seven o'clock, and after thirty minutes reported that sixteen of the seventeen jurymen had agreed to a verdict of justifiable homicide. After eight o'clock the coroner was informed that the jury could not achieve unanimity, prompting the coroner to respond that they would agree when they became a little hungrier. Finally, after nine o'clock the jury returned a united verdict of justifiable homicide (Greene 52). Following the verdict, the coroner repeatedly badgered the jury to change its decision, calling the verdict poor and unfair and refusing to accept it. The jury stood firm, as evidenced by the transcript: "There was much murmuring among the jury, and cries of 'Dismiss us.' One juryman said—'So help me God, I am ready to faint—I have fasted from ten o'clock this morning. I have had nothing but a glass of water. It is a shame to treat us this way. If you will not have our verdict, dismiss us; for if you keep me here for a year, I cannot, with respect to my oath, alter that verdict'" (Greene 52). The editor of the *Morning Advertiser* summarizes the public reaction to the verdict: "The feeling of admiration and gratitude towards the immortal jury, that, in defence of the people's rights, brought in a verdict of Justifiable Homicide in the case of the slain policeman Culley, exceeds all that we believed it to be. From all quarters of the country, to which intelligence of the verdict had reached, from Whigs, from Tories, from Radicals, of everywhere and every complexion, the same feeling prevails" (Greene 7). Demonstrations of public feeling made by the people in honor of the "Calthorpe-street Jury" included engraved silver cups, a banner with each juror's

name and a large portrait of the foreman, Mr. S. Stockton. George Fursey was also acquitted by the jury at trial, after which the coroner's jury and their families were invited for a celebratory sail on the Thames with much fanfare.

"HARDLY AN ASSIZE WHICH WOULD NOT FURNISH A CHAPTER FOR 'PUNCH'"[1]

In the nineteenth century a tension existed between Blackstone's vision of the jury as "the palladium of English liberty" and the sense that jury verdicts existed as fodder for ridicule by the Victorian press. Debates over the future of the jury raised a host of social and political questions. For example, tensions over class, education and the merits of civic virtue collide in the question of threshold qualifications to serve on a jury in Victorian period. Victorians grappled with how to create a standard for serving on a jury that both allowed jurymen to receive education from serving on a jury, but also ensure the jury have a level of intelligence so as not to bring absurd verdicts betraying incompetency. In addition, the standards for serving on a jury had to be measured against the fact that gentlemen typically wanted to escape jury service.

Legislating standards for jury duty raises a crucial question: what is the measure of judicial wisdom? The Juries Act of 1825 expanded the jury qualifications to include £10 freeholders and £20 leaseholders. This relaxed monetary requirement allowed uneducated men to serve as jurors, while many educated men such as clergy, lawyers, doctors, and military officers were exempt from jury service. By the mid-nineteenth century, discussions by the Common Law Commissioners focused on stiffening jury service standards to restore a more exclusive jury pool. For example, Alexander Pulling

[1] Joseph Brown, *The Dark Side of Trial by Jury* (London: William Maxwell, 1859) 29.

testified on behalf of the Law Amendment Society on Juries committee at Lord Enfield's select committee on juries in the House of Commons in 1867. Pulling believed that to remedy the issue of unrepresentative juries, it was necessary to end exemptions for clergymen, army officers, and lawyers, rather than open jury service to more citizens. Pulling cited the fact that if the previous standards remained in place, a juryman would need to personal property of £1500 or £150 per annum from landed property (Lobban 198). Pressure to reform the jury system continued through the 1870s; one piece of legislation mandated the occupation of property with a rateable value of £30, or £50 in towns with populations above 20,000 to perform jury services. The fear remained that raising standards would unduly limit the jury pool; therefore, the 1825 standards were preserved through the twentieth century. Of course, raising the property requirements for serving on a jury is only one way to try to achieve a more competent jury. Another way, undertaken in legal treatises and Victorian novels, is to educate the current pool of jurors.

Rather than a polemic for or against the jury, George Stephen's *The Juryman's Guide* (1845) is written as a guidebook "accessible to the class from which jurymen are usually taken" (3). Stephen posits a standard of "judicial wisdom" for jurors; he argues that "unless jurymen are conscientious and intelligent, our 'Trial by Jury' is worse than an empty boast" (4). Stephen's definition of judicial wisdom also emphasizes moral integrity and common sense, demonstrating how the authors of legal treatises' hopes for the jury align with the goals Victorian novelists have for their readers. What better way to learn moral integrity than to read Victorian novels? Trollope outlines this goal for novelists in *An Autobiography*:

> The writer of stories must please, or he will be nothing. And he must teach whether he wish to teach or not. How shall he teach lessons of virtue and at the same time make himself a delight to his readers? That sermons are not in themselves often thought to be agreeable we all know. Nor are disquisitions on moral philosophy supposed to be pleasant reading for our idle hours. But the novelist, if he have a conscience, must preach his sermons with the same purpose as the clergyman, and must have his own system of ethics. (70)

Stephen speaks of "the judicial mind" as "an abstracted and quasi disembodied existence." Time in the jury-box is often marked by confusion and excitement; therefore, jurors often give a verdict opposed to what they would give in quiet contemplation. This quality of the juror's experience of being outside the realm of everyday life intrigues me, as it does Victorian authors. There is a way in which the silences surrounding the jury deliberations in fictional legal narratives are more than simply legal realism modeled after the secrecy of actual trial jury proceedings. As I argue in Chapter 4, Dickens's silences when narrating the jury frustrate the reader's hopes for realism. Indeed, abrupt shifts from closing arguments to the verdict invite readers to narrate these deliberations themselves; in these silences, Dickens is summoning his readers to assume judicial minds. Of course, there is a connection between characterization in a narrative and idea of a juryman as being disembodied—we don't think of literary characters as flesh and blood.

The Juryman's Guide emphasizes the subtleties that the juryman must be in tune with: "a juryman is bound to discriminate between the direct and the collateral evidence supplied by a document; it may entirely fail as regards the former, and yet be of extreme importance as regards the latter" (G. Stephen 51). Stephen suggests that neither lawyers nor judges elucidate the facts for the jurors: "jurymen are left to ferret out for themselves, through a cloud of law-jargon and in a haze of foreign mystification, the real point in issue, with little other help than their own natural shrewdness" (56). In Chapter 3, I argue that Trollope's *The Eustace Diamonds* (1871) requires this type of active ferreting out of facts from its readers. Nuanced representations of the controversies surrounding the jury in Victorian novels bolster the argument that authors use their fictional legal narratives as a platform for educating readers, the potential jurors of Victorian England. If we look to depictions of the jury in novels and find awareness of the factors tarnishing faith in the juries during the Victorian period, then it follows that novels can be read alongside of Stephen's guide for jurymen as advocating judicial wisdom.

In *The Dark Side of the Trial by Jury* (1859), Joseph Brown begins by invoking Blackstone's praise of the jury only to describe the guilt he feels from contradicting such a legal giant. Brown emphasizes the contrast between conducting everyday life and composing a jury; one hires a surgeon or lawyer to fix a problem but must place trust in trial to men who have never decided questions more important than "the quarrels of his children, or the discussions of the pothouse" (8). If proponents of the jury system have heralded its use of the common man, Brown emphasizes the jurors' commonness as a negative attribute, in that jurors "march straight from the weighing of candles to the

weighing of testimony: - from the measuring of tape to the measuring out of fate; - from dealing in bacon and cheese to dealing with the lives properties and liberties of men" (9). Brown's writing reflects the apparent confusion over what constitutes sufficient intelligence to serve on a jury; Brown is of the opinion that "The English seriously believe that judicial wisdom springs forth mature from every tradesman's head. This is a fit article of faith for a nation of shopkeepers" (10). What is the measure of "judicial wisdom" expected for a common law juror? Interestingly, Brown notes that the problem with juries is that they aren't the intellectual equals of the lawyers at the trial (11). Are they supposed to be the intellectual equals of the lawyers? The relationship between the wisdom of juries and the wisdom of lawyers is one that is afforded serious treatment by Trollope, connecting back to this question of the measure of judicial wisdom.

Both juries and novelists judge guilt and innocence; however, the novelist provides a text to justify the outcome while the jury is expected to act as the sole judge of all the facts without recording those facts. Historically, the lack of note taking emerged from a lack of education among the jury. The facts wash over the jury and a general impression forms; a critical question of this project will be to consider how this method of decision making relates to theories of knowledge during the Victorian period. For example, the standards for jury decision making mirrored the contemporary philosophical thought. Both philosophy and legal treatises discussed the concept of beyond reasonable doubt. Jurors were instructed to decide on "moral certainty" or certainty without doubt when no absolute certainty is obtainable in the empirical realm (Shapiro 40). The Victorians wanted things quantified, measured and explained; the jury process lacks this

transparency. *The Juryman's Guide* (1845) suggests writing down the facts and never being satisfied without hearing every word from the witness's mouth; "even a slight difference of emphasis may attach a very different meaning to the same words; nor is it infrequently the case that the witness himself, when he observes the attention with which his evidence is received by the jury, is recalled to accuracy and precision" (G. Stephen 58). In other words, the words of the witness are open to interpretation and the witness responds to the jury's attentiveness. In this way, the jury typifies the anxiety over uncertainty and the unexplained, as well as the anxiety of authorship – of the evidence in a literary text being misread.

Another important consideration of the debate about the future of the jury is that those most likely to engage in debate had no personal experience with the institution. As discussed in Chapter 4, Dickens served on a jury; therefore, his writings on the juries occupy an important space outside of the narrative of the jury as written by barristers authoring legal treatises. Needless to say, the audience for legal treatises differs from the audience of the Victorian novel. The majority of legal treatises written about the jury were not written for the eyes of jurymen, whereas Victorian novelists would reach this population. Still the standard in the 1825 Juries Act meant that the great majority of adult males were excluded from jury service. The limited portion of the population providing members of the common jury is crucial to understanding the ways in which Victorian authors question these limits. In Chapter 5, I discuss how both Haggard and Braddon use the limitedness of the jury to forge their own expansive visions of the composition of a jury.

It is impossible to discuss the narrow social composition of the common jury without raising the issue of the special jury. Another reason for disillusionment with the jury system came from the corruption of special juries. Since the thirteenth century, the principles of a special jury system were in place; for example, in London, juries of cooks and fishmongers were summoned when the accusation was one of selling spoiled food (Thayer 95). In the late eighteenth and early nineteenth century, the popularity of special juries rose, especially in commercial cases. Any defendant willing to foot the bill could request a special jury, but special juries were most often impaneled for libel cases and marital cases. Special juries were not immune to the problems the Victorian public found with common juries. For example, Chief Justice William Erle, "decried the transformation of the special jury into an adjunct of the class system" (Oldham 165). Nicolas Gedye, writing in *Observations on Law Reform* (1867) agrees, arguing that it creates great inequality for a common jury to cost twelve shillings while a special jury costs twelve guineas; thus, special juries should be terminated (16). Additionally, requests for special juries were used by defendants to postpone trials. Bentham protested against the practice of jury packing, wherein a rotating group of special jurors were impaneled for cases and engaged in guinea trade—each special juryman received a guinea per case (166). Jury packing was not a new phenomenon; in 1285, the practice of filling the jury with ill, impoverished men in order to spare the rich from jury duty was corrected by statute (Thayer 90). Yet the problem of jury-packing grew in the nineteenth century, and the legislation responded to their concerns.

Under the Juries Act of 1825, special juries were to be selected from "persons of higher degree when the causes were of too great a nicety for the discussion of ordinary freeholders" (Blackstone qtd. in Devlin 19). In concrete terms, this class of persons included merchants, bankers, and persons with the title of esquire. Of principal freeholders, forty-eight names were chosen from the Sheriff's book; both the plaintiff's attorney and the defendant's attorney eliminated twelve names from the list. Of the twenty-four names left, the first twelve called were empanelled as the jury. These streamlining procedures did not end jury-packing, or solve the class problem of special juries; however, both of these issues were addressed by the Juries Act of 1870. By requiring that special jurors could only serve once a year, the Juries Act of 1870 curbed jury-packing. In addition, the Act broadened the eligibility to be a special juror to include persons occupying a dwelling house rated at one hundred pounds or more in large towns and cities, or fifty pounds elsewhere, any person occupying a farm rated at three hundred pounds or more, or any person occupying nonfarm premises rated at one hundred pounds or more (Devlin 172).

The attack on the institution of the jury was not limited to common and special juries; the future of the grand jury was also part of the debate in the nineteenth century. The grand jury is charged with reviewing the proceedings of the magistrate to whom the prisoner's bill of indictment came before. W. Campbell Sleigh summarizes the problems of the grand jury: "the Grand Jury system—as worked out in the metropolitan district—is fraught with mischief, whether in the prosecution of the guilty, or the emancipation of the innocent: that while it acts as a protection and a shield to the former, it is a terror, and an

instrument of extortion, as regards the latter" (6). Once again, the argument for abolishing the grand jury centers on the modernity of the Victorian age; in past centuries the grand jury was needed to safeguard against the influence of biased or incompetent magistrates. The Victorian press and the higher standards for education and professionalism provide all the protection necessary (Sleigh 7). The major complaint about the operation of the grand jury is the possibility for corruption--it allows the guilty a means of escaping punishment while the innocent can be extorted by witnesses. Additionally, if an indictment is thrown out before a grand jury, those who are innocent never experience the triumph of a public acquittal (Sleigh 9). Since the grand jury proceedings are private, the sense is that the witness may have paid off the witnesses (Sleigh 25). A May 16, 1857 article in *Household Words* expresses the opinion that grand jury deliberations should take place always in the presence of reporters ("Grand Jury Powers" 458). Even jurors on grand juries testified as to the grand jury's uselessness. In a presentment made by the Grand Jury, at the Middlesex Sessions in June 1846, the foreman "felt the performance of their duties to be little better than a waste of time, and an idle mockery" (Sleigh 30). The treatises arguing to abolish grand juries use as consolation that the trial by jury will remain; however, the points raised in the discussion against grand juries also casts doubt on the capabilities of common jurors.

A cultural anxiety over what goes on behind closed doors is a feature of both grand and common juries. Showell Rogers, in "The Ethics of Advocacy," invokes the attaint to emphasize the lack of responsibility each juryman has in the nineteenth century:

> In the olden days the writ of *Attincta* lay against a jury for giving a false or perverse verdict, and grievous were the penalties attached to conviction of this crime-the liberty, property, and all legal rights of the false juryman were forfeited forever, but this contrivance for preventing or punishing perjury having been long obsolete, and being now abolished, each member, with his nominal one-twelfth of responsibility to bear, is practically free, and when the foreman declares (as one did lately in the sheriff's court) that they found "magnanimously" for the plaintiff-it may be inferred that such is the verdict of *some* at least out of the twelve, but also that some have taken the responsibility of saying so, and the rest of allowing them so to say. (265)

Through the fifteenth century, the power of the jury was checked by the attaint, during which a second jury of knights and more eminent individuals heard the same case. If the second jury found differently from the first jury then the first jury was condemned for perjury and the verdict reversed (Thayer 149). Even with the attaint, problems with bribery and delays were offered as incentives to refine the parameters of jury qualification and heighten the consequences of perjury. Gradually, it became clear that in their role as triers of fact, the jury exercised its discretion so as to make the attaint untenable (Thayer 151). Blackstone observed very few examples of attaint after the sixteenth century; Thayer explains this condition as an outcome of the end of the jury's reliance on personal knowledge. As the jury began to rely on witnesses, the attaint became overly draconian and the judge instead ordered a new trial. Following the

abolishment of attaint, the punishment jurors receive is one of public exposure; jury lists are published and annotated to reflect erroneous verdicts (Thayer 170).

Here, Rogers is referring to a highly publicized blunder in which the foreman reports "We are magnanimous for the plaintiff. Not guilty, but we hope she won't do it again." Since the Victorian public was not privy to a transcript of the jury's deliberations, the correctness of the jury's language served as a barometer of the jury's intelligence. This example of the confusion of "magnanimously" with "unanimously" comes up in more than one treatise. It feels like a desperate attempt to read the transcript of a jury's deliberations, using one word. This one word in effect becomes the jury's narrative, as it is not part of the law of a proceeding. In fact, transcript of trials show the foreman trying to elaborate on a verdict, as the judge protests saying all that is allowed is guilty or not guilty. In this way, the distinctions between a legal transcript as law and a fictional legal narrative are blurred, for legal transcripts contain fiction, the unlawful explanations of a jury's verdict, while *The Eustace Diamonds* contain law, Mr. Dove's opinion written by the attorney Merriweather. Again, this anxiety over the undiscoverable nature of the jury's deliberations is voiced through Victorian fiction's legal narratives, namely through the meticulous reconstruction of the judges' actions in contrast to the unknowable nature of the jury.

When discussing jury incompetency, it is also necessary to consider instances when the impartiality of a jury is called into question. This problem of impartiality is identified not only with wealthy defendants in the railways and life insurance policy cases, but also extending to the bills of doctors and lawyers, and gentleman contesting the

charges of a merchant. Again, the principles of a jury system are highly connected to questions of national identity; for example, "in part of Wales, a Welsh jury can hardly be got to do justice to an Englishman against a Welshman" (Rogers 278). This issue of impartiality is expressed in the public opinion. In a letter to the editor in *The London Times* dated January 11, 1860, a foreign magistrate reports on his observations of the English trial by jury system. He witnesses three prisoners, one a gentleman, charged with stealing property. The gentleman, following testimony to his good character, is acquitted, while the other two prisoners are promptly sentenced. The foreign magistrate's conclusion is that "the much vaunted system of trial by jury has its defects, one of which seems to be a failure of justice when a 'gentleman' is concerned" ("Letter" *London Times* 11 Jan. 1860, 2). What is interesting is that the foreign magistrate erroneously designated the gentleman prisoner as the master of the diocesan training school and after the actual master complained in a letter to the paper, the magistrate issued an apology. Once again, popular culture reminds us that "the law" exists in multiple forms.

The rhetoric surrounding the jury draws upon the contrast between the illustrious history of the institution and the ways in which society has declined since its inception. At this time, articles abound in the Victorian press covering the high-profile blunders by the jury, as troubling snippets of the incompetency operating behind closed doors. For example, an article from September 20, 1856 in *The London Times* introduces the illustrious history of the jury before pillorying it:

> If one institution is dearer than another to the Englishman it is trial by jury; he treasures it as the most precious heirloom which he has received

> from antiquity; it is associated in his mind with the national genius and greatness, it reminds him of our Anglo-Saxon ancestry, and carries him back to the first foundation of the British Constitution and the earliest dawn of British liberty. Yet there is no institution in the country which has been more prolific of jokes than trial by jury. Wherever we go we hear some ridiculous anecdote about a jury, some absurd mistake which a jury has made, which tried the gravity of the judge and the whole bar. ("Trial by Jury" *London Times*, 8).

This piece compares the jury to the parish clerk, in that ecclesiastical society delights in laughing at the blunders of this servant of the church in much the same way the public revels in the mishaps of a jury trial. In fact, the jury is described as standing "like the eternal hills, and you could no more shake it by any amount of joking than you could shake the geological basis of the earth by the same process." The suggestion is that it is harmless to attack the jury because its permanency is inevitable. As in other places, this blasé attitude toward a check upon an oppressive government is a mark of Victorian optimism. It is astonishing that Victorians felt confident that the British government would never become corrupt and require the check of the people's voice, as those prepared to abolish the jury suggested. But it is equally baffling that at a time of momentous legal reform, with changes in marriage, evidence, and criminal responsibility to only name a few, Victorians could feel assured of the jury's permanency.

After leading with the idea that the jury provides excellent fodder for jokes, the article outlines the incompetency of not one but two juries hearing the case of a colliery

accident. The facts proved that the accident was caused by the willful carelessness of the "butty," who ignored the warnings of his coworkers and brought lighted coals into the pit, which then exploded killing a man. The first jury brought a verdict of accidental death, ignoring the defendant's carelessness, while the second jury brought a verdict of willful murder, suggesting that he intended to injure himself and others. An exchange between the coroner and the foreman followed, in which the foreman defends the jury's sense that by ignoring the warnings of his coworkers and bringing the live coals into the pit, the butty maliciously intended to injure himself and the other men. After long deliberation, the jury returns and amends their ruling to one where he "wilfully did it; we can't say that he did it maliciously." The coroner takes this as a verdict of manslaughter; the piece emphasizes this is the coroner's verdict not the jury's, therefore "the law thus luckily provides an official midwife for the labours of our juries, to help judicial truth to its birth; otherwise, our English oracle of justice would often deliver very ambiguous responses" ("Trial by Jury" 8). In this case, the relationship between the coroner and the foreman is paternalistic and characterized by handholding. To what extent is Victorian faith in the jury artificial, if the ultimate hope is that a coroner or judge will intervene to fix bad verdicts? Juries had legal protection from being coerced into a judge's predetermined verdict; however, the specific rights of juries in trials remained unclear. Since each of the authors in the following chapters narrates the power dynamic between the presiding authority, whether it be a judge or a coroner, and the jury, each participates in writing the law in this area of ambiguity.

Painting the jury as a damaged institution is more than harmless jesting, for the rise of a certain type of advocate is premised on the very depiction of the jury as gullible, uninformed and susceptible to sensationalist rhetoric. For this reason, it is impossible to discuss the Victorian jury system without also discussing the debates surrounding the ethics of advocacy for lawyers. Rogers details the ways in which the jury system fosters the creation of a class of lawyers that is "vulgar and claptrap in address and language, but practised in the congenial task of talking *down* to a common jury, and with a natural capacity for blustering, bullying, browbeating, humbugging, and the use of those cunning arts calculated to mislead an ignorant body of men in a position novel to them, but which are threadbare and transparent to those who, like the judge and counsel, are condemned now to be perpetually witnessing these contemptible tricks of the trade" (277). Rogers argues that because of this contemptible group of lawyers, the rest of the profession is abased by having to cater arguments to an uneducated jury. The chapters that follow provide analyses of the representations of attorneys in the novels under discussion. Law and literature scholarship tends to ask the question of whether or not a character in a fictional legal narrative is a good lawyer. My discussion of lawyers in the novels will focus on how a lawyer's behavior reflects the debate on the future of the jury. In addition, I argue that by portraying legal professionals as weak, Victorian novelists carve out space for asserting literary authority.

A series of high profile cases gained considerable attention from the Victorian press, shining a light on questions of the ethics of advocacy. One such case is Charles

Phillips' defense of the murderer Courvoisier, a Swiss valet who was ultimately convicted of murdering his master, Lord William Russell. In this 1840 trial, Phillips represented Courvoisier in court for eight hours. Then, his client confessed his guilt privately to his attorney. Phillips inquired whether his client would plead guilty, but his client declined and requested a full defense. Rogers suggests that if Phillips had abandoned his client at this point "he would have usurped the function of the judge and jury, have invested himself with powers of life and death over his own client, and inevitably have sent him to the gallows" (277). Phillips later had to defend himself from charges of misconduct in the defense proceedings; he argued "I had no right to throw up my brief, and turn traitor to the wretch – wretch though he was – who had confided in me" (Rogers 277). In fact, Chief Justice Tindal and Baron Parke heard the case, and when Phillips consulted Baron Parke about the changed circumstances, the judge affirmed Phillips' sense of duty to continue the case. The Courvoisier case sets precedent for the prosecution being responsible for building its case, while the defense counsel is under no obligation to assist the prosecution in achieving justice. According to Rogers, to suggest otherwise "is not only wholly to misconceive the function of an advocate, but to advance a theory that is not likely to find support outside the jurisdiction of the courts of Utopia" (278). The public outrage following the Courvoisier trial is crucial to understanding Trollope's representation of lawyers, especially of Chaffanbrass in *The Three Clerks* (1857), *Orley Farm* (1861) and *Phineas Redux* (1874). Trollope has been accused by modern literary critics of misunderstanding the function of an advocate, and while Chapter 2 counters this line of argument through exploring the afterlife of *Orley*

Farm in the legal community as tool for teaching legal ethics, it can be argued that Trollope's depictions of lawyers point to the lack of a unified Bar on the subject of the ethics of advocacy.

FOCAL POINTS OF VICTORIAN DEBATE: JURY REFORM

New models for the jury were proposed during the nineteenth century. Brown urges that trial by jury has no place in the complicated, industrial world and needs to be terminated, as was trial by ordeal. Indeed, systematic problems with the jury such as jurors' lack of education and responsibility were viewed as "organic diseases which can only be cured by death" (Brown 32). According to Brown, by putting an end to juries, the judge would decide both questions of fact and law and "the criminal will no longer find refuge in the sophistry of counsel or the weakness of juries" (33). Forsyth disputes this view, arguing that judges get more respect when people participate in trial through jury; judges aren't criticized because they are merely expounding the law not deciding the facts. The suggestion is that if judges decided both questions of fact and law the possibility for corrupt verdicts would be greater, as would the public backlash to unpopular verdicts (379). Forsyth, like Brown, believes legal reform is needed: "the machinery of our law is too complicated, and its working too expensive, to suit the wants of the present busy age; and it must be effectually amended, or it will run the risk of being rudely overthrown" (Forsyth 374). While each of the novelists I treat in this project engage with the deep cultural anxiety over the competency of the jury, Trollope elucidates a vision for reform.

Some Victorians see a distinction between the necessity of a jury in criminal and civil trials. The argument was that criminal trial by jury protected against political persecution and guaranteed equal protection under the law, but in civil cases, it was only "productive of much positive evil" (G. Stephen 66). Noting that continental Europe has not adopted the jury system for civil trials, Forsyth discusses the difficulties inherent in the civil trial jury as tri-fold— the cases are too complex, too various, and do not have enough at stake. Conor Hanly attributes the decline of the civil British jury in the second half of the nineteenth-century to three factors: the establishment of judicial independence, the self-confidence of the legal profession, and a county court model for non-jury trials in 1846. As with the arguments surrounding the call to abolish the grand juries, there is a sense that England is no longer in danger of being ruled by an oppressive government, rather, government officials are viewed as competent, impartial and immune to corruption. As far as the self-confidence of the legal profession, a rise of professionalism with heightened standards for attorneys, including a rigorous examination occurred in the second half of the nineteenth century. This professionalism of the Bar created tension with the perceived amateurism of jurors, leading to arguments questioning the jury's intelligence and competency. The County Courts Act of 1846 standardized local courts, hearing cases with a jurisdictional limit of £20 in personal and contractual causes. The Act made juries in local courts optional, but most litigants chose bench trials, a fact which impacted the debate on the Common Law Procedure Act of 1854, which made jury trials optional in superior courts. (Hanly 255).

Returning to public opinion, in a letter to the editor from *The London Times* on March 24, 1853, the author argues that a judge is better suited to try some causes than a jury. He appeals to an instinct of the community to doubt the average jurymen, stating that "every person must have felt this who has seen the trial of what is called a heavy cause" (“Letter” *London Times* 24 Mar. 1853, 3). The author observes the jury to be embarrassed by the complexity of some civil trials and finds it problematic that judges themselves doubt their ability to decide both questions of fact and law. Although the jury acts as a check on the judge, it is the judge that the public puts its trust in.

In addition to reducing the number of civil jury trials, Victorian debate on jury reform focused on the number of men on a jury and the requirement of the unanimous verdict. The trial by jury took several forms before the number of jurymen became standard; juries in the thirteenth century contained anywhere from nine to forty persons. Sir Edward Coke offers an explanation for the significance of the twelve men:

> That the law delighteth herself in the number of twelve, for there must not only be twelve jurors for the trial of matters of fact, but twelve judges of ancient time for trial of matter of law. Also for matters of state there were in ancient time twelve counselors of state. And that number of twelve is much respected in holy writ, as twelve Apostles, twelve stones, twelve tribes. (qtd. in Forsyth 199)

Twelve was the number used under Anglo-Saxon law; a common expression was that a man freed himself from a charge with the twelfth hand, referring to twelve compurgators. Forsyth explains the rationale behind twelve men as being determined by the state of

society and the amount of intelligence amongst the jurors; in the assize during Henry II's rule, the jurors acted as witnesses, so it was necessary to have several testimonies to arrive at a safe conclusion (198). The rule of unanimity took some time to solidify; trials ranged from accepting a majority to all but one in the early years, but by the late fourteenth century it was established that all trial procedures needed the agreement of twelve men (Thayer 89). Brown argues that the use of twelve men allows all to shirk responsibility and let others in the group bear the weight of analyzing the case. Forsyth agrees with the danger of collective thinking when requiring a unanimous verdict:

> A more lax view of the individual obligation of each is adopted on account of the mischief which results from a final disagreement. But the man who has taken an oath that he will judge fairly between man and man, and who joins in a verdict which is opposed to his own view of the effect of evidence in the case, commits a grievous sin, for which he will assuredly have one day to answer. (Forsyth 198)

Jeremy Bentham, in the *Art of Packing as applied to Special Juries* (1821) discusses the reasonableness of the unanimity rule:

> If the work of forming verdicts, had been the work of calm reflection working by the light of experience, in a comparatively mature and enlightened age, some number, certain of affording majority on one side, viz., an odd number, would on this, as on other occasions, have been provided; and to the decision of that preponderating number would of

> course have been given the effect of the conjunct decision of the whole. (qtd. in Forsyth 197)

In other words, unanimity was logical when the jury was using its own knowledge as testimony; in that case, the evidence of twelve men was deemed the amount necessary to be conclusive. After the attaint was removed, jurors had no incentive to get it right as there were no legal percussions, just a new trial (Brown 20).

Beyond legal treatises, the unanimity requirement for jury verdicts was a favorite issue of the Victorian press, captivating the public's imagination. For example, in "Trial by Jury; Or, How It's Done!" (1877), *Punch* dramatizes the perils of collective thinking for its readers:

> The Jury then retired to consider their verdict.
>
> Foreman. Well, Gentlemen, what shall it be? For the Defendant or the Plaintiff? I say for the Plaintiff--damages 1000.
>
> Number Two. Nonsense! you mean the Defendant. He was in the right, and nothing shall make me give in if I stay here all night.
>
> Number Three. Don't say that. Because I have a dinner-party at seven!
>
> Number Four. And I promised my wife to be back by six.
>
> Number Five. I say ditto to Mr. Foreman. Only make it a farthing damages. Nothing shall move me from that!
>
> Number Six. Which was the Plaintiff?
>
> Number Seven. Why, the one who refused to pay the bill, don't you know.
>
> Number Eight. Lor' bless me, I thought he was the Defendant!

> Number Nine. Come, Gentlemen, it's getting late. Make up your minds. I don't care which you give it for; in fact I thought both sides in the wrong.
>
> Number Ten. Did you? I thought both sides in the right.
>
> Number Eleven. It's no use talking. I tell you I mean to stick to the Defendant.
>
> Number Twelve. And I to the Plaintiff. Damages 1000. Not a penny less, mind you, not a penny less!
>
> Foreman. I see, Gentlemen, we must decide it in the usual way. I will toss the shilling, if you will be good enough to cry Heads or Tails.
>
> The jury returned after a few minutes' absence. Verdict for the Plaintiff -- damages forty shillings. (193)

An article in *The London Times* dated March 25, 1847, on the unanimity requirement for juries, seeks to "dispel the superstitious halo that surrounds our jury system" (7). Using a tree metaphor to describe the jury as "an important branch that might be lopped off, and still the tree would flourish," with the aim being to "prune it with a vigorous hand," this article argues the most important reason to end the unanimity requirement is because the public has lost confidence in it. As evidence of the public's disillusionment with the jury, the article cites outrage over recent cases, such as the case of Ann Scuffum at Stafford, who was acquitted of the murder of her own child on the ground of insanity, in the absence of all legal proof of that malady, and in the wake of her own confession that she had pushed the child under water because she could afford to keep only one child. The paper suggests a universality to this epidemic of unjust verdicts: "we appeal, in short, to

the records of almost all trials as they appear in our columns, and which it is impossible to read without perceiving an increasing disregard on the part of juries to the evidence, or the Judge, or their own oaths" ("Unanimity for Juries" 7).

This pressure upon individual jurors to achieve unanimity is compounded by the allowance of extensive deliberation periods. An 1830 Commissioners report recommended that the jury should not deliberate longer than twelve hours unless at the end of that period they unanimously agree to apply for additional time (Forsyth 209). This recommendation was supported by some of the most distinguished lawyers of the time but not carried into effect. An article in the *London Times* dated March 31, 1859 discusses the failure of a bill to end the unanimity requirement for jurors following six hours of deliberation. The paper argues that the "sacred" institution needs to focus on just pay for juror services and end the withholding of food and drink, thereby making alterations to the system unnecessary. A similar position is expressed in a *London Times* article dated December 21, 1858. The opinion of the paper is steeped in the cultural memory of justice system:

> We are accustomed to look back with wonder at the barbarous expedients of past times, but it can hardly be said that even the pressing to death of prisoners who would not plead was more absurd in theory than the depriving twelve jurymen of food for more than 24 hours, to force them to form a righteous judgment on a disputed point. If Lord Campbell had, like his predecessors in the old days, ordered the jury to be carted to the borders of Middlesex, and there shot out into a ditch, it would have added

> little to the absurdity of the proceeding. ("Trial by Jury," *London Times* 21 Dec. 1858, 6)

Again, the Times appeals to the jury's contentious past to indicate the current system's antiquation. In this case, the jury came to a standstill on an action against a railway company where a passenger alleged the negligence of the company caused him injury. The jury's finding smacked of incompetence; it found for the plaintiff and set the award for his grave injury at one farthing. The failure of the system stemmed not from stupidity but an inability to compromise under the pressures of unanimity. In this way, the rhetoric on the jury seized upon its colorful yet questionable history to argue for pushing it forward into modernity.

If Victorian historians questioned the nineteenth-century jury's medieval roots, then it is also important to consider how competing trial systems co-existed with the trial by jury and lingered in the cultural memory. In *A Preliminary Treatise on Evidence at the Common law* (1898), James Bradley Thayer details the trial systems in place alongside the trial by jury. Trial by witnesses co-existed with trial by jury; trial by witnesses involved a group of community witnesses chosen by the king's officials. Another early form of trial was the trial by oath; through a practice called compurgation, an acquittal could be achieved if persons swore to the veracity of a defendant's oath without any knowledge of the case itself (Thayer 24). Although Henry III ends the right to compurgation, its popularity in villages and popular courts suggests how it resonates throughout the Victorian cultural imagination. Palgrave, a Victorian commentator, highlights the tension between the old and new law: "it is out of use, but not out of force;

and it may, perhaps, continue as a part of the theory of the law until some adventurous individual shall again astonish the court by obtaining his privilege and by thus informing the legislature of its existence, insure its abolition" (qtd. in Thayer 34). Here we have an interesting overlap in systems of community justice. As I argue in Chapter 3, Trollope becomes Palgrave's "adventurous individual" by evoking compurgation in *The Eustace Diamonds*. By calling to mind compurgation as an alternative to trial by jury, Victorian fictional legal narratives encourage readers to consider the jury's place in the British cultural memory. Referring to an archetype of community justice allows Victorian authors to destabilize trial by jury.

THE "LAW" OF LITERATURE

Before I can continue with an examination of how the history of the jury resonates in literature, it is necessary to define "law" as it is used in this dissertation. "Law" certainly includes legal treatises, court transcripts, published decisions of cases, and statutes, as these are the materials Victorian lawyers most frequently consult to learn the principles applicable to specific legal issues. However, a case can be made for a broader definition of the law to include the "law" of fictional legal narratives, as the lines between law and literature are blurred during the Victorian period. Reading law in tandem with literature allows for the realization that both legal treatises and fictional legal narratives are rooted in narrative. Indeed, the authors of Victorian legal treatises used examples from literature to support their arguments. For example, in the introduction to *A Treatise on Facts as Subjects of Inquiry by a Jury* (1861), James Ram offers an expansive,

technical definition of what constitutes fact in a trial and then illustrates his point with examples: Wordsworth's "Lucy Gray" and Shakespeare's *Romeo and Juliet* (2).

Another way to conceptualize literature's influence on law is through the lens of legal education. In *The Advocate: His Training, Practice, Rights, and Duties* (1852), Edward W. Cox discusses the power of literature to shape the mind of the attorney. According to Cox, "Languages and Polite Literature, which have the twofold object of extending the range of ideas and cultivating the power of expression, besides giving a peculiar refinement and grace which nothing else will impart, require only a careful choice of the best words of the best authors, and reading twice or thrice to impress them upon the memory" (88). If Victorian lawyers are advised to read literature, then it is difficult to argue that Victorian law is not influenced by literature. Indeed, Wigmore recognized the relationship between the two disciplines: "no man can truly apportion the meed of influence between [Charles Dickens and Charles Reade] and the lawyer-legislators – Mackintosh, Romilly, Brougham, Denman, Campbell. But it is certain that the former sunned and watered what the latter sowed and reaped" (577).

Beyond the blurred lines between law and literature as sources of guidance for lawyers, the case for treating fictional legal narratives as within the broad universe of writings that may be termed "law" draws further support from the debate over the future of the jury. The jury originated from the common law tradition, not statutes. Common law is based on custom, and the legal practices that follow from a standard set out in a legal opinion are shaped by public opinion. Fictional legal narratives write the "law" in areas where the law is vague, such as the jury's degree of independence from the judge in

issuing verdicts. Trial by jury is not an abstract legal issue, but a popular one that has widespread social significance. Indeed, the legal treatises emphasize natural law philosophies over positive law. For example, George Stephen's *The Juryman's Guide* (1845) states as its purpose, a consideration of "the moral qualifications which are requisite for the due discharge of [a jury's] duty" (2). Unlike other Victorian treatises on trial practice, such as treatises on the laws of evidence written for an audience of lawyers, legal treatises on the jury expressly indicate that they are for non-lawyers and the public at large. Here, I am not only referring to *The Juryman's Guide*, which identifies its audience as the potential juries of England, but also *Trial by Jury: The Birth-right of the People of England* (1865), which includes this opening declaration:

> So persuaded am I of the paramount importance of arousing the attention of the lay portion of my countrymen and countrywomen to a subject which immediately concerns their nearest and dearest interests in common with my own….I would fain hope also that my paper may induce those to undertake the task who are more competent to discharge it, and whose experience of life, and especially of judicial proceedings, has taught them to hold with our illustrious Commentator, that "this is a species of knowledge most absolutely necessary for every man in the kingdom, as well because he may be frequently called upon to determine the rights of others, his fellow-subjects, as because his own property, his liberty, and his life depend upon maintaining in its legal force the constitutional trial by jury" (6).

The anonymous author of this legal treatise cites Blackstone, but is also legitimizing the authority of the common people to spread their "law"—their experiences with trial by jury. It is in this tradition that fictional legal narratives follow; Victorian authors are answering a call to contribute to the popular "law" on the jury. For these reasons, this dissertation reads fictional legal narratives as more than professionally-minded high-brow entertainment; legal fiction engages with contemporary legal debates and produces its own "law."

In *Trial by Jury*, Patrick Devlin concludes that**,** "trial by jury is more than an instrument of justice and more than one wheel of the constitution: it is the lamp that shows that freedom lives" (164). What the jury is and stands for is in constant flux and hinges on principles that constitute the English identity--faith in the common man, faith in communal processes, faith in democracy itself. Representations of the jury in literature are significant as they raise questions about class tensions and identity formation; in this respect, Victorian authors create their own juryman's guidebook to educate the readers, the potential jurors of England. Part of the challenge of writing on the English jury is its existence as a "black-box"; juries are not allowed to give reasons for their decisions and this silence is replicated in literary representations of the jury. But from a narrative standpoint, these silences in the literature are significant. This dissertation explores representations of juries because they are more than just reflecting tensions in Victorian society about class, democracy and identity formation; representations of the jury offer an important and unconsidered perspective on Victorian novelists' literary vision.

Chapter 2 considers representations of the jury in *The Three Clerks* (1858) and *Orley Farm* (1862) to argue for a conflicted, modern Trollope. For example, Trollope's advocacy for the abolishment of the unanimity requirement in *The Three Clerks* is evidence of his modernity. An examination of the afterlife of *Orley Farm* in the legal community complicates my assessment of Trollope as a "finder of fact," balancing legal realism with literary authority in his fictional legal narratives. Chapter 3 extends my analysis of Trollope's role as "finder of fact" in *The Eustace Diamonds* (1871) and *Phineas Redux* (1873) to the legal profession, as Trollope's depictions of lawyers elucidates a similar tension between reliance on legal precedent and reliance on legal rhetoric.

In Chapter 4, I argue that Dickens's representation of the British jury shifts from ambivalence in *The Pickwick Papers* (1836-7) to a positive representation in *A Tale of Two Cities* (1859). One explanation for this shift is the debate over the future of the jury, reaching a high point in The Common Law Procedure Act of 1854. Like Trollope, Dickens negotiated the balance between legal realism and legal imagination in his fictional legal narratives, and the afterlife of Dickens in the legal community sheds light not only on his role as "finder of fact" but also on the rhetoric of law and literature. Finally, Chapter 5 examines the ambiguous verdicts in Collins's *The Law and the Lady* (1875) and Braddon's *An Open Verdict* (1878), as well as the juryless trial of Haggard's *Mr. Meeson's Will* (1888). Looking beyond the jury, Collins, Braddon and Haggard use extralegal approaches and literary strategies to solve legal problems.

Chapter Two
A Trollopian Vision of Community Justice: *The Three Clerks* (1858) and *Orley Farm* (1862)

Until recently, the works of Trollope have been considered by critics to be a step below those of the great Victorianists like Dickens and Thackeray. In 1883, Henry James summed up the "genius" of Trollope: "With Trollope we were always safe; there were sure to be no new experiments. His great, his inestimable merit was a complete appreciation of the usual" (525). If Trollope documents the usual, he does so in a way that encourages deeper study. Twentieth-century critics continued to dismiss Trollope; Terry Eagleton labeled Trollope's work as "an anemic, naively representational 'realism', which is merely a reflex of commonplace bourgeois empiricism" (qtd. in Markwick and Morse 1). Trollope's oft-quoted musings on the writing process must be partially to blame for these accusations of depthlessness. In *An Autobiography* (1853), he states that "I was once told that the surest aid to the writing of a book was a piece of cobbler's wax on my chair. I certainly believe in the cobbler's wax much more than the inspiration" (121). If Trollope is an artist who credits his own stamina more than any genius, then it follows that his craft is in danger of being classified as mechanical. Rather than a mechanical realism reflecting popular sentiments, Trollope's work reflects great ambivalence over traditions in flux, particularly with regard to the legal debates of the Victorian period. As Margaret Markwick and Deborah Morse suggest, current critical work has "discovered a conflicted Trollope, a Trollope who does not so much mirror the times he wrote in, as undermine the given view" (5). It is this conflicted Trollope,

grappling with the repercussions of modernity in drawing his vision of community justice that I wish to discuss.

Although Trollope's work has been viewed as capturing the ordinary, his legal realism has been questioned. A nineteenth-century critic faulted Trollope for always getting the law wrong, despite the "unremitting zeal" with which he "cannot bear a lawyer" ("Mr. Trollope and the Lawyers" 156). Later critics like R.D. McMaster have wondered whether Trollope misunderstood the role of an advocate (8). This chapter challenges the idea that Trollope's engagement with the law is characterized by its inaccuracy. Trollope's treatment of the jury shows his awareness of the current controversies surrounding the future of the jury as documented in legal treatises and by the Victorian press. Since his work reveals this understanding of the nuances of the issues plaguing Victorian juries, one can read Trollope's representations of the jury as inviting reader participation, similar to a juryman's guide. Trollope's vision of community justice exhibits a deep anxiety over the future of the jury. Trollope's novels include expressions of doubt of the intelligence of individual jurors and simultaneously champion majority verdicts to promote independent thought. That he does this not only betrays Trollope's ambivalence as to the future of the jury but also demonstrates how closely these contradictory attitudes are wrapped up with the formation of British identity. As I will argue, Trollope's narration objecting to the unanimity requirement for the jury works against tradition and demonstrates his modernity. Trollope's willingness to question an institution as sacred as the jury shows Trollope considering how past standards must evolve to meet the challenges of the modern world. Additionally,

Trollope's treatment of aspects of the jury such as its role as "finder of fact" and its narrative silence are an essential component of his literary vision.

Trollope's modernity has been a subject of interest for recent scholars. David Skilton finds Trollope's modernity to lie in his characters' self-definition through the community (qtd in Lewis 59). For Monica C. Lewis, Trollope's engagement with modernity is best demonstrated through the authorial interruptions in his novels (143). Amanda Anderson identifies Trollope's modernity in his novels' complex ideological critique. According to Anderson, "There is a genuine tension between his liberalism and his persistent valuing of traditional forms of life in the face of what for him are the negative dimensions of modernity" (510). Indeed, Trollope's response to the disenchantments of modernity is revealed in the tension between traditional ways of life and innovative thought in his novels. In *An Autobiography*, Trollope sets forth his definitions of the liberal and the conservative. The conservative sees inequalities in society, "and being surely convinced that such inequalities are of divine origin, tells himself that it is his duty to preserve them" (292). The liberal is also aware of these inequalities in society being of divine origin, "but he is alive to the fact that these distances are day by day becoming less, and he regards this continual diminution as a series of steps towards that human millennium of which he dreams" (292). Trollope calls himself an "advanced Conservative-Liberal," in that he supports Liberal progress at a gradual pace which tolerates Conservative pushback (293). Trollope's representations of the jury give us another lens with which to read his political and social vision.

Shifting legal frameworks regarding the power and purpose of juries are reflected in Trollope's texts and lead to broader questions about English national identity and civic culture. In *The Three Clerks*, the legal entanglements emerge towards the end of the novel; however, Trollope spends a great deal of time earlier in the novel considering the principles of community justice. By "community justice," I am referring not only to the way in which the jury system places the fate of a member of the community in the community's hands, thereby provoking discussions about the education and judicial wisdom required to serve on a jury, but also the sense that prior systems of justice linger in the cultural memory and shape current modes of thought.

DEFINING COMMUNITY AND JUDICIAL WISDOM IN *THE THREE CLERKS*

Even before setting forth the legal plot, Trollope's *The Three Clerks* presents a juryman's guidebook to his readers, the potential jurors of England, as much of the narrative revolves around meditations on democracy. For example, when the Woodward family visits Bushey Park, one of the royal parks at Hampton Court, each family member comments on the use of public space by the "thronged multitude of men, women and children" (54). Uncle Bat is "a bit of a democrat," and is delighted by the crowd of Londoners who all come down to the park to eat dinners in the open air (54). Harry and Alaric agree with him, and it is the women that show less enthusiasm, declaring the Park was spoiled by the dirty bits of greasy paper which were left about on all sides. In addition, the central focus of the first half of the novel—debates over competition in the workplace—takes place within the domestic settings of the narrative. Gertrude says having competitive exams would encourage young men to be ambitious, while her

mother, Mrs. Woodward, believes "the world will soon be like a fishpond, very full of fish, but with very little food for them" (142). In the context of the fictional legal narrative, Trollope's discussion of community instills faith in communal processes, regardless of class distinctions. The competitive exam system assists his readers in imagining the features of an ideal jury—educated and community-minded. In this way, the novel's reflections on democracy and the education of its citizenry build to the courtroom scene at the core of the narrative.

In *An Autobiography*, Trollope criticizes his father for taking up farming without any special education or apprenticeship (7). This criticism reflects Trollope's complex position on the British educational system, which manifests itself throughout *The Three Clerks* and is directly connected to the qualifications of the common juryman. Trollope's account of the meteoric rise of Alaric Tudor includes a discussion of his educational background. We learn that Alaric believes himself to be "superior to the men who worked round him in his office. He was made of a more plastic clay than they, and despite the inferiority of his education, he knew himself to be fit for higher work than they could do" (88). Embracing a philosophy that "education is nothing – mind, mind, is everything, mind and the will," Alaric nonetheless gets misled to bad dealings by the Honourable Undecimus Scott (90). If Alaric lacks a moral education, then in *History of Trial by Jury* (1852), William Forsyth advocates for the moral education of juries:

> If common jurors are sometimes found deficient in intelligence, the true remedy is not to abolish the system, but to improve it by educating the people so as to make them more fit to discharge the duties which it

> imposes. The more we train and discipline their minds, and above all, the more we teach them to act upon Christian principles, so that they may undertake the office under a deep and solemn sense of responsibility, and with a conscientious reverence for their oaths, the more excellent an instrument for the ends of justice will the jury become. And the converse of this is equally true. Where the mental capacity of a nation is mean, or the standard of public morality is low, and the obligation of an oath is lightly felt, no worse machinery could be devised for judicial investigations. It is invidious to specify instances, but it is easy to see that there are countries where trial by jury, even in criminal cases, must be a doubtful experiment, and in civil, at present, beyond all question a failure." (380)

The goals Forsyth mentions are also Trollope's self-professed aims for a novelist. In *An Autobiography*, Trollope talks about giving readers an education in morality in a way that is enjoyable to them. I would argue the courtroom scenes function in the novel to create this enjoyment of moral instruction; the narrative style invites the reader's participation in deliberation, as a potential juror of England. In *The Three Clerks*, Trollope notes that "The spirit of the age raises, from year to year, to a higher level the standard of education. The prodigy of 1857, who is now destroying all the hopes of the man who was well enough in 1855, will be a dunce to the tyro of 1860" (72). Trollope's evolving ideas over education and apprenticeship can be seen as creatively registering the discussions over standards of intelligence necessary to serve on the jury.

In *The Three Clerks*, discussions of moral codes of conduct relate to Trollope's education of the imagined juror. For example, Sir Gregory tells Alaric "that his own interests should always be kept in subservience to those of the public service" (177). Alaric wonders whose conduct he should follow: "Was it that Sir Gregory's opinions were such as should control the outward conduct, and Undy's those which should rule the inner man?" (177). This discrepancy between outward conduct and the inner man fuels the Victorian public's anxiety over the decision-making jurors perform behind closed doors. If the Victorian debate over the future of the jury hinges on questions of civic duty, then civil servants like Alaric who put themselves before the public are acting out this responsibility. Alaric's meditations on honesty connect to principles of community justice. He debates whether men "really endeavoured to be honest, or endeavoured only to seem so. Honesty was preached to him on every side; but did he, in his intercourse with the world, find men to be honest? Or did it behove him, a practical man like him, a man so determined to battle with the world as he had determined, did it behove such a one as he to be more honest than his neighbors?" (325). The concept of measuring one's own honesty in comparison to one's neighbors is at the heart of the debate over the jury's unanimity requirement. As discussed in Chapter 1, one argument against requiring unanimous verdicts in jury trials is that forcing unanimity encourages collective thinking and allows for a lax view of individual obligation. In this way, Trollope's discussions of judicial wisdom educate his readers early in the novel so as to be prepared to receive his vision for legal reform—his authorial aside decrying the unanimity requirement during Alaric's trial for embezzlement. In this way, realist

novelists such as Trollope use legal narratives as a platform for educating readers, the potential jurors of Victorian England, and writing the "law."

Community justice supersedes the force of statutory law in *The Three Clerks*, as Trollope considers the tension between natural law and positive law. Natural law is what we believe to be just based on moral values of right and wrong while positive law is statutory law or other law, deriving its authority from its existence as "law." When Alaric begins to take money from a trust he is managing for Clementina, he considers his fraudulent acts as his being at the mercy of a new law: "What if he should wake some morning and find himself in the grip of some Newgate myrmidon? A terrible new law had just been passed for the protection of trust property; a law in which he had not felt the slightest interest when he had first seen in the daily newspapers some tedious account of the passing of the various clauses, but which was now terrible to his innermost thoughts"(462). The "terrible new law" Trollope is seemingly referring to is positive law, the Trustee Act of 1850. According to Chantal Stebbings, in *The Private Trustee in Victorian England*, the legislature had little control over which individuals became trustees. The principle difficulty in legislating the administration of a trust is similar to that of operating a jury system: how can one measure honesty and trustworthiness? The sole hurdle to becoming a trustee was legal capacity; the legislature "could not legislate for intelligence, objectivity or integrity" (Stebbings 51). Indeed, the legislature's inability to set standards for the level of intelligence of the trustee presents a parallel anxiety to the capabilities of the juror. The Trustee Act of 1850 provided the court with a general statutory power to appoint new trustees. The purpose of the Act was to aid in efficiency,

although this took the process out of the hands of the private individual. In *The Three Clerks*, there is a sense that private policing of a trustee's actions is sufficient, as Mrs. Val wishes to replace Alaric as Clementina's trustee when she finds he is thinking of a seat in Parliament. Stories surrounding the trustee process aren't far from Dickens' depiction of Chancery in *Bleak House* (1853). For example, an 1847 case with an undisputed, dead trustee required an application to the court for three years and cost a third of the trust's income over the period (52). In debates surrounding the Trustee Act of 1850, the main issue was the extent to which courts should be involved in what the public saw as the private relationship between the trustee and trustor. Trollope harnesses this sentiment in his depiction of Alaric's unraveling. As a fraudulent lawyer, Alaric is concerned that the "new terrible law" will be his undoing; however, it is the community's judgment, based on the natural law principles of morality, which leads to his downfall. When Mrs. Val tells Alaric's wife Gertrude "what all the world is saying," it becomes clear that this will be the true threat to Alaric's fraudulent practices, not the enactment of a new law. It is Gertrude's vindication of Alaric that hastens his arrest; Mrs. Val argues that she said nothing about lost confidence in Alaric but Gertrude takes offense and says "who has dared to suspect him of anything not honest or upright?" (477). The community's suspicion—not the law—is the key to Alaric's downfall. Indeed, in the first reports of his arrest, Alaric is defined through his role in the community: "Alaric, their own Gertrude's own husband, their son-in-law and brother-in-law, the proud, the high, the successful, the towering man of the world" (510).

Upon Alaric's arrest for the embezzlement of Clementina's trust, the narrative shifts from a consideration of the values of community justice, such as judicial wisdom, in the abstract, to a conventional legal plot, complete with a defendant, a judge, and of course, lawyers. A recurrent theme in law and literature scholarship is the significance of legal narratives as a means of uncovering the private lives of legal professionals. According to M.M. Bakhtin, "The significance of legal-criminal categories in the novel, and the various ways they are used—as specific forms for uncovering and making private life public—is an interesting and important problem in the history of the novel" (qtd. in Dolin 21). Richard Weisberg devotes a chapter to Dickens's lawyers in his seminal study *Poethics* (1992), where he claims that "fiction about law continues to uncover better than any other medium the private lives of lawyers….and compels us to recognize that lawyers' private lives directly affect their public performances" (18). Like Dickens, Trollope's lawyers have richly drawn personal and professional lives; indeed, Jaggers in *Great Expectations* (1860) is the subject of much scholarship. An important distinction between the ways Trollope and Dickens depict attorneys is Trollope's use of recurring characters that appear in multiple novels, allowing for evolution. For example, the Chaffanbrass introduced in *The Three Clerks* is different from the Chaffanbrass representing Phineas in *Phineas Redux* (1874). Trollope spends a lot of time illuminating the advocacy strategies of a host of different classes of attorneys. Evidence of Trollope's uniqueness in this area comes from a consideration of the ways in which

Trollope is used as a tool for teaching legal ethics. Indeed, Trollope's characterization of Chaffanbrass and the other attorneys is essential to our understanding of the author's vision of community justice. Once attorneys were given the ability to address the jury directly under the Prisoners' Counsel Act (1836), the ethics of advocacy became inextricably connected to the debate over the future of the jury. In fact, much of the rise of sensational rhetoric from attorneys is said to have been a direct product of their increased role in the courtroom, and increased access to influencing the jury. Juries cannot be analyzed in a vacuum; it is necessary to consider juries through their relationships with attorneys and judges.

Among Trollope scholars, *The Three Clerks* is well-known as the entrance of Chaffanbrass. At seventy-seven, Chaffanbrass is described as having endless capacity for work. At Alaric's trial, Chaffanbrass enters the courtroom late, carrying a huge old blue bag and "wearing a wig that apparently had not been dressed for the last ten years, made his way in among the barristers, caring little on whose toes he trod, whose papers he upset, or whom he elbowed on his road" (540). Chaffanbrass' inattention to his personal appearance emphasizes the separation between work and the domestic; it is as if there is no space for his humanity at work. Like Dickens' portrayal of Jaggers, Trollope emphasizes the mannerisms of Chaffanbrass in the courtroom as part of an elaborate performance; the barrister is profuse with snuff, very generous with his handkerchief, and always at work on his teeth. A general shabbiness prevails as his linens are never clean, his hands are never washed, and his clothes are never new. In narrating the private life of

the professional, Trollope emphasizes how "the lawyer" is a role being performed, separate from the individual:

> and those who only know him in public life can hardly believe that at home he is one of the most easy, good-tempered, amiable old gentlemen that ever was pooh-poohed by his grown-up daughters, and occasionally told to keep himself quiet in a corner….chooses to be ruled by his own children. But in his own way he is fond of hospitality; he delights in a cosy glass of old port with an old friend in whose company he may be allowed to sit in his old coat and old slippers. He delights also in his books, in his daughters' music, and in three or four live pet dogs, and birds, and squirrels, whom morning and night he feeds with his own hands. He is charitable, too, and subscribes largely to hospitals founded for the relief of the suffering poor (545).

Descriptions of the personal lives of attorneys do more than merely provide realism. In the nineteenth century, the increased role for attorneys in the courtroom ignited a curiosity about the lives of attorneys; yet, until there was a rise in the professionalism of the Bar, standards for who lawyers should be remained murky. When rules of professional conduct for lawyers became standardized in the mid-nineteenth century, these rules included ideas about how the lawyer should conduct himself in his personal life. Thus, fictional legal narratives write the "law," filling in a space in legal culture lacking in narration. Trollope's descriptive strategies and narrative techniques allow him not only to write the "law" but also to assert his literary authority over the

fictional legal plot. For example, Trollope's facetious naming of lawyers is a descriptive strategy Trollope uses to challenge the legal profession. Reaching an apex in *The Three Clerks*, (Clark 17) facetious names include Alaric's junior counsel Younglad, who is only young compared to Chaffanbrass; yet, as a lawyer in his forties his friends only hope that "at some distant future" he will make a living out of his profession. Younglad has been "sitting, and walking and listening, let alone talking occasionally, in criminal courts, for the last twenty years" (540). Trollope's satirization of the stalled career of the attorney in the hierarchical structure of the legal profession allows the legal satire to operate as a competition between the professions, for Trollope as a novelist was able to write with great efficiency from the beginning of his independent career.

Critics often position the legal narratives of Victorian novelists as in competition with the law. As Jonathan Grossman argues, Dickens in *The Pickwick Papers* uses the law to create his authority as a novelist (85). In *An Autobiography*, Trollope argues that he needs to live with each of his characters day and night to make them real, but the Old Bailey is not a character in his novel, the way the court of Chancery is alive in Dickens' *Bleak House*. Dickens and Thackeray attended trials at the Old Bailey; Trollope resists association with the place. Instead, Trollope employs paralipsis in his depiction of the Old Bailey; he explains that Alaric was to be tried at the Old Bailey, but "as I have never seen the place, and as so many others have seen it, I will not attempt to describe it" (551). By neglecting to describe the Old Bailey, a symbol of the criminal court, Trollope's fictional legal narrative resists physical classification, thereby carving out its own space as a competing version of the law. Similarly, Trollope's use of paralipsis in his

representation of Chaffanbrass creates a sense of competition between the law and literature. Trollope frames his discussion of Chaffanbrass with an authorial intrusion: "There are not now too many pages left to us for the completion of our tale; but, nevertheless, we must say a few words about Mr. Chaffanbrass" (557). His profundity and commitment to detail as a novelist was a source of pride, so Trollope's reference to a page limit seems arbitrary. The self-consciousness with which Trollope confronts the barrister in his narrative allows him a position of power with which to assert his literary authority over the fictional legal plot. Furthermore, Trollope departs from his usual plain style to use elaborate metaphors and flowery language to describe the barrister, thereby satirizing legal rhetoric. Trollope points a special critical eye towards what he terms the browbeating of witnesses. Under the examination of Chaffanbrass, a witness's "very truths must be turned into falsehoods;" this connects to broader discussions of Trollopian honesty. Legal rhetoric, "the best talents of practiced forensic heroes," is compared to torture: "eels are skinned alive, and witnesses are sacrificed, and no one's blood curdles at the sight, no soft heart is sickened at the cruelty" (542). Stylistically, the sentence mirrors the rhetorical style of questioning at trial, as one is bombarded with clauses colliding with each other. Trollope refers to the rise of the movement to protect animals from cruelty; the implication is that there needs to be a similar legislative restraint on the animalistic lawyers. The community sanctions Chaffanbrass's antics: "Men congregate to hear him turn a witness inside out, and chuckle with an inward pleasure at the success of his cruelty" (545). Chaffanbrass is alternately represented as a cat, an actor, and a gladiator. Through the uncharacteristic use of figurative language, Trollope offers a

description of the barrister that is unusually thorough but at the same time circuitous. In effect, Trollope gives the reader a tirade on Chaffanbrass, mirroring the brow-beating the witnesses get; however, to achieve this effect he has to break from his plain style. We notice the contrast in the language as Trollope confronts the conflicting motivations between narrative realism and legal rhetoric. By satirizing legal rhetoric, Trollope distinguishes his competing narrative of the legal culture from the artificial one presented by lawyers.

The balance of legal rhetoric and specialized legal knowledge is an idea Trollope examines in his portrayals of lawyers and may be compared with the categories of style and realism with authors. In many ways, Trollope's conflict with the legal profession apparently derives from a mistrust of legal rhetoric. On Alaric's case, Trollope writes: "It would be needless to describe how a plain case was, as usual, made obscure by the lawyers" (522). Why is Trollope troubled by a lawyer's advocacy to admit an "insignificant piece of evidence" which would have no real bearing on the case, when the author himself traffics in verisimilitude? In *Autobiography*, Trollope is dismissive of any author "who thinks much of his words as he writes" (177). Indeed, Nathaniel Hawthorne celebrates the simplicity of Trollope's style: "If I were to meet with such books as mine by another writer, I don't believe I should be able to get through them. Have you ever read the novels of Anthony Trollope? They precisely suit my taste" (qtd. in apRoberts 12). Ruth apRoberts connects the critical neglect of Trollope with his straightforward writing style, observing that Trollope's writing has the effect on many readers of allowing one to "slip into the posture of consumer rather than critic" (13). Yet it is the act of

consumption that allows Trollope's fiction to fulfill the purpose of educating imagined jurors. apRoberts traces how critics have shifted from the view that Trollope has no style to a view of a clarity that appears effortless; she suggests that "lucid, or the intensive pellucid, is the word [Trollope] uses most often to describe the best way for the novelist to write" (22). Indeed, this debate over literary style translates directly to the debate over legal rhetoric as opposed to technical legal expertise.

In the emerging field of criminal defense, Trollope sees Chaffanbrass as lacking technical expertise: "As a lawyer, in the broad and high sense of the word, it may be presumed that Chaffanbrass knows little or nothing. He has, indeed, no occasion for such knowledge" (TC 535). For example, Chaffanbrass attacks the prosecution instead of defending his client, presenting the mechanical defense that he had "never heard a case against a man in a respectable position, opened by the Crown with such an amount of envenomed virulence" (TC 560). The barrister has to be reminded that the prosecution was not carried on by the Crown. Again, the satire here is not merely to point out an injustice, as Trollope also examines the nuances of the legal profession itself. Trollope seems suspicious of a professional who does not need a body of knowledge; his scrutiny of the legal profession is a narrative technique allowing him to assert his literary authority and write “law.”

TROLLOPE’S JURY IN *THE THREE CLERKS*

If Trollope’s meditation on community raises issues of class tension and education, *The Three Clerks* exists as a guide to his readers, the imagined jury. Beyond

serving as a window into Trollope's social vision, representations of the jury in the novel highlight his authorial vision. This section will explore the jury's role as the "finder of fact" in relation to Trollope's position as a "finder of fact." In addition, I will examine how the narrative silence of the jury functions in the text.

In Victorian trials, the jury is charged with deciding questions of fact; however, juries gather the facts from, inter alia, witness testimony as elicited by lawyers' questions, and there is no way to tell if a jury is influenced by feeling. This ambiguity connects with the nineteenth-century debate over empiricism. Indeed, Alaric raises this issue of the process by which juries decide questions of fact when questioning the point of a trial as opposed to an outright confession:

> He knew he was guilty, he could not understand that it was possible that any juryman should have a doubt about it; he had taken the money that did not belong to him; that would be made quite clear...what possible doubt would there be in the breast of anyone as to his guilt? Why should he vex his own soul by making himself for a livelong day the gazing-stock for the multitude? Why should he trouble all those wigged counsellors, when one word from him would set all at rest? (550)

The nature of trial by jury creates doubt in Alaric's conviction despite the facts, because jury deliberations are a non-empirical process. Alaric wants to plead guilty, but Gitemthruet forbids it; rather than a professional attorney-client relationship, the dynamic is one of ruler and ruled: "You have done me the honour to come to me, and now you must be ruled by me. Plead guilty! Why, with such a case as you have got, you would

disgrace yourself for ever if you did so. Think of your friends, Mr. Tudor, if you won't think of me or of yourself" (539). That the choice to plead guilty in a trial by jury is motivated by the need to preserve the lawyer's reputation is troubling in its disconnect from the aims of justice. Yet the choice to stand trial in consideration of one's friends is a decision that elevates feeling over fact. As readers, we learn that "the lawyer's eloquence converted Alaric;" the implication is that the lawyer's rhetoric persuaded Alaric to weigh feeling over fact. Although the narrative events of Alaric wanting to display honesty and plead guilty, while his lawyer wants to obscure the truth may appear to be far-fetched to present day readers, the possibility of these events channels the anxieties the public felt over the lawyer's "rule" following the Prisoners' Counsel Act (1836).

To understand this public debate on advocacy and the jury in the Victorian period, it is necessary to consider the passage of the Prisoners' Counsel Act (1836), which granted defendants the right to have a full defense at their trials (Bentley 101). Until the passage of this act, defense counsel could examine and cross-examine witnesses, but it could not address the jury and provide commentary about the evidence. In the eighteenth century, the defendant's own statement of the facts to the jury in a case was thought to carry sufficient guarantees of its truth. Debates surrounding the Prisoners' Counsel Act focused on the capacity of the accused to explain themselves to the jury and the advocate's evolving role as a professional stand-in for the client. Those for reform argued that both uneducated and educated defendants had difficulty explaining themselves to the jury; whereas, those opposed argued that the innocent would never fail

to adequately represent their own stories. The fear was that counselors, speaking in their clients' stead, would mislead juries with their rhetoric (107). In the unsigned "Rights and Duties of Advocates" (1836), Lord Henry Brougham challenges this position, arguing that an advocate's eloquence is overrated when compared to the power of looks and tears in a party's testimony (167). Trollope enters into the conversation expressing the anxiety over the purchasing of judicial outcomes the Prisoners' Counsel Act appeared to sanction:

> Alaric's guilt was clear as daylight to all concerned; but a man who had risen to be a Civil Service Commissioner, and to be entrusted with the guardianship of twenty thousand pounds, was not to be treated like a butcher who had merely smothered his wife in an ordinary way, or a housebreaker who had followed his professional career to its natural end; more than that was due to the rank and station of the man, and to the very respectable retaining fee with which Mr. Githemthruet had found himself enabled to secure the venom of Mr. Chaffanbrass (547).

Although Alaric's guilt is apparent, Trollope's representation of his trial still focuses on the lawyer's ability to mislead the jury with his rhetoric. Highlighting how legal rhetoric can be highly emotional, Chaffanbrass' address to the jury is not straightforward and the style is poetic: "I boldly aver that I have never forgotten myself, and I may at times be angry, when I see mean falsehood before me in vain assuming the garb of truth--for with such juries as I meet here it generally is in vain--I may at times forget myself in anger; but, if we talk of venom, virulence, and eager hostility, I yield the palm, without a contest, to my learned friend in the new silk gown" (564). Chaffanbrass's

complaint is that emotions are being used to sway the jury; of course, he is trying to manipulate the jury's emotions as well, into feeling guilt or shaming the prosecution. In this way, Trollope emphasizes the extent to which the trial by jury is not necessarily driven by facts and empiricism, but rather, something more emotional and subjective.

Trollope is careful to provide detail of the mannerisms of the lawyer; although Chaffanbrass is only allowed to directly address the jury once, he nonetheless communicates with the jury throughout the trial. Trollope demonstrates a keen understanding of this dynamic: "'Oh!' said Mr. Chaffanbrass; and as he uttered the monosyllable he looked up at the jury, and gently shook his head, and gently shook his hands. Mr. Chaffanbrass was famous for these little silent addresses to the jury-box" (483). Chaffanbrass's legal strategy is to induce the jury to see Undy as guilty and thereby view Alaric as innocent; he knows how to address a jury, and "the city juries are very fond of [him]" (489). The suggestion is that the jury is malleable and the trial will not hinge on facts but interpretation and the extent to which the juries are emotionally connected to Chaffanbrass. Indeed, the jury is depicted as deceivable, as "the judge, he well knew, would blow aside all this froth; but then the judge could not find the verdict" (483). As Trollope acknowledges, the judge cannot find the verdict; however, the judge can do a great degree of handholding to steer the jury's deliberations. Trollope illustrates this point with the judge's instructions to the jury:

> Gentlemen, I must especially remind you, that in coming to a verdict in the matter, no amount of guilt on the part of any other person can render guiltless him whom you are now trying, or palliate his guilt if he be guilty.

> An endeavour has been made to affix a deep stigma on one of the witnesses who has been examined before you; and to induce you to feel, rather than to think, that Mr. Tudor is, at any rate, comparatively innocent-innocent as compared with that gentleman. That is not the issue which you are called on to decide….As regards the evidence of Mr. Scott, I am justified in telling you, that if the prisoner's guilt depended in any way on that evidence, it would be your duty to receive it with the most extreme caution, and to reject it altogether if not corroborated. That evidence was not trustworthy, and in a great measure justified the treatment which the witness encountered from the learned barrister who examined him" (487).

By writing the jury charge to include the judge's opinion of the cross-examination, Trollope confronts the issue of attorneys' brow-beating of witnesses. Here, the judge serves as a check on the attorney, and Trollope emphasizes the plain style of the judge's address as contrasted with Chaffanbrass's artistry: "But, alas! the deliberate and well-poised wisdom of the judge seemed to shower down cold truth upon the jury from his very eyes. His words were low in their tone, though very clear, impassive, delivered without gesticulation or artifice, such as that so powerfully used by Mr. Chaffanbrass; but Alaric himself felt that it was impossible to doubt the truth of such a man; impossible to suppose that any juryman should do so" (488).

While Chaffanbrass possesses an almost machine-like endurance in the courtroom, the jury is portrayed as thoroughly human, ready to offer their "brightest attention" which will be "dim enough before the long day be over" (549). In addition, it

is significant that the jury men are not equipped with pen and paper until the second day of the trial. As discussed in Chapter 1, some controversy over the jury's lack of note taking at this time. Historically, this lack of note taking stemmed from a lack of education among the jury. The prevailing presumption was that the facts washed over the jury and a general impression formed; note taking is an effort to elevate the standards for the jury. George Stephen, in his treatise written as a guidebook for the common jury called *The Juryman's Guide* (1845) suggests writing down the facts and never being satisfied without hearing every word from the witness's mouth: "even a slight difference of emphasis may attach a very different meaning to the same words; nor is it infrequently the case that the witness himself, when he observes the attention with which his evidence is received by the jury, is recalled to accuracy and precision" (58). By placing the pen and paper in the jury box, Trollope casts the jury as writers, charged with determining "the truth," by recording the actual words spoken, rather than deriving a truth from allowing ideas to wash over them.

The tension between feeling and fact in the jury's role as "finder of fact" is mirrored in Trollope's position as "finder of fact" in the novel. Trollope must balance his goals of legal realism ("fact") with his literary vision ("feeling or imagination"). Trollope's vacillation between self-conscious editing and adherence to legal procedure in the trial scene disrupts his goal of literary realism. For example, Trollope inserts himself in the narrative to broadcast his withholding of details concerning the trial: "I will not try the patience of anyone by stating in detail all the circumstances of the trial. In doing so I should only copy, or, at any rate, might copy, the proceedings at some of those modern

causes célèbres with which all those who love such subjects are familiar. And why should I force such matters on those who do not love them?" (545). In so doing, he distances himself from the Newgate novels of Bulwer-Lytton and Ainsworth, but at the same time the law is central to his narrative. This narrative technique draws attention to his professional authority as editor of the record of the trial. Trollope strives for realism in the courtroom; for example, when Chaffanbrass addresses the jury, he indicates that "the forms of the court would not give him the power of addressing the jury again, he must now explain to them what he conceived to be the facts of the case" (551). There is a self-consciousness with which the author, as "the finder of fact," tries to get the legal procedures right; however, these attempts open the author to the criticism from practicing lawyers.

One such criticism of *The Three Clerks* appeared in the *Saturday Review*. The review is unsigned; however, it has been speculated that the author is Sir Henry Maine, a lawyer and frequent contributor to the *Saturday Review* (Smalley 24). According to Maine, "the law is a pitfall from which few novelists can escape uninjured" (*Saturday Review*, 5 Dec. 1857). The focus of Maine's critique is on Chaffanbrass's treatment of the witness Undy Scott. Indeed, Maine objects to Chaffanbrass's cross-examination so vehemently as to feel compelled to propose a plan for the writing of future fictional legal narratives:

> Why do not novelists consult some legal friend before they write about law? Is it impossible to find a barrister who has a hobby for criminal law, and also a hobby for criticizing novels, and who would bring his skill in

> both lines to bear upon the correction of a layman's mistakes? We think that such a man might be found, and he would be invaluable to all fiction writers who evolve descriptions of English trials out of the depths of their consciousness, and square them to meet the principles of eternal justice (*Saturday Review*, 5 Dec. 1857).

Maine imagines a lawyer actively editing a work of literature; however, he seems oblivious to Trollope's critiques of lawyers' lack of technical legal expertise throughout *The Three Clerks*. Indeed, Trollope's point in his fictional legal narratives seems to be that he is thinking in more detail about how lawyers practice law than the Victorian bar itself. While conceiving of a trial out of "the depths" of a conflicted conscience such as Trollope's results in simple mistakes about details of the legal process, it also effects a reimagining of what community justice signifies. Trollope is intrigued by the coercive power a lawyer is able to exercise in the courtroom; for example, it is suggested that Undy Scott remain in his seat to be questioned by Chaffanbrass. Chaffanbrass will not allow it, as his questioning "must be of a nearer, closer, and more confidential nature than such an arrangement as that would admit. A witness, to his way of thinking, was never an efficient witness till he had his arm on the rail of a witness-box" (478). The distinction seems to be that of a participant in the events at trial and that of a passive observer. Critics tend to rationalize Trollope's campaign against the brow-beating of witnesses as biographical, as he once endured a painful cross-examination. I would suggest that Trollope's investment in the treatment of witnesses is inextricably connected to his overarching ideas about community justice, and his nostalgia for an older system of

justice which he helps preserve in the cultural memory. Trollope captures the sense that the jury is not just made up of the men chosen for Alaric's trial but also the community that judges him from the courtroom, "the agitated crowd with that happy air of command which can so easily be assumed by men at a moment's notice, when they feel themselves to be for that moment of importance" (553). This vision of community justice harkens back to a trial by witnesses, wherein a group of community witnesses chosen by the king's officials decided a defendant's fate. In earlier systems of jury trials, the witnesses, as those with the first-hand knowledge of the case, became the decision-makers and advisors. However, in the later system of the jury trial depicted in *The Three Clerks*, their firsthand knowledge is filtered through the rhetoric of the lawyer, who is not directly connected to the circumstances of the case. Trollope elevates the voice of the witness throughout his text, as characters with first-hand experience in the case composed the ancient juries. The conflicted Trollope looks back to the past forms of juries that linger in the British cultural memory and at the same time is willing to question traditions of the current jury system that are in contradiction to the needs of modern society.

In *The Three Clerks*, Trollope's vision for legal reform is best represented by his polemic against the unanimity requirement for jury verdicts. He vehemently enters the debate on the side of a verdict of a majority:

> And then one of the great fundamental supports of the British constitution was brought into play. Reason was thrown away upon this tough juryman, and, therefore, it was necessary to ascertain what effect starvation might have upon him. A verdict, that is, a unanimous decision from these twelve

> men as to Alaric's guilt, was necessary; it might be that three would think him innocent, and nine guilty, or that any other division of opinion might take place; but such divisions among a jury are opposed to the spirit of the British constitution. Twelve men must think alike; or, if they will not, they must be made to do so. There are many ludicrous points in our blessed constitution, but perhaps nothing so ludicrous as a juryman praying to a judge for mercy. He has been caught, shut up in a box, perhaps, for five or six days together, badgered with half a dozen lawyers till he is nearly deaf with their continual talking, and then he is locked up until he shall die or find a verdict. Such at least is the intention of the constitution. The death, however, of three or four jurymen from starvation would not suit the humanity of the present age, and therefore, when extremities are nigh at hand, the dying jurymen, with medical certificates, are allowed to be carried off. It is devoutly to be wished that one juryman might be starved to death while thus serving the constitution; the absurdity then would cure itself, and a verdict of a majority would be taken" (490) .

Trollope's position is consistent with his vision of community justice. By "community justice," I am referring not only to the way in which the jury system places the fate of a member of the community in the community's hands, thereby provoking discussions about the degree of education and judicial wisdom required to serve on a jury, but also the sense that prior systems of justice linger in the cultural memory and shape current modes of thought. Unanimity was logical when the jury was using its own knowledge as

testimony; in that case, the evidence of twelve men was deemed the amount necessary to be conclusive. The opinions of jurymen informed by witness testimony and subjected to attorneys' rhetorical pressure is another matter entirely, and one in which the author cannot tolerate coercion in "the spirit of the British constitution." The earnestness of love of country cannot allow for the squashing of the individual spirit.

Trollope's narration objecting to the unanimity requirement for the jury works against tradition and his position follows the conditions of modernity. A July 10, 1858 article in *The Examiner*, entitled "The Jury Torture," argues for an end to the unanimity requirement, using the comments of the presiding judge as evidence. The presiding judge argues that he has seen an increase in the intelligence and education in the jury box since the plaintiff and defendant are able to testify; therefore, he discharges juries that are unable to reach a verdict, arguing that "any detention now is like torturing a jury into a unanimity their consciences do not sanction." *The Examiner* further claims that in most cases the foreman acts as a mouthpiece of falsehood to a fiction of unanimity, and urges an end to all torture in the name of achieving a unanimous verdict, as "shutting men up in the depth of winter without food or fire being as much a species of torture as tearing their flesh or crushing their joints" ("The Jury Torture" 435). By contrast, James Fitzjames Stephen defends the practice of withholding meals from the jury:

> To put a dozen farmers into a bare room, and say, 'You shall not have your dinners till you have made up your minds,' is a rough and half humorous way of mentally jogging them. It assumes the possibility of a kind of sluggish obstinacy, which requires some slight external stimulus to

> overpower it: and to view the thing tragically is to misunderstand it. It must, however, be confessed, that the expedient is coarse and rough, and that it belongs to an age of less considerate and polished manners than our own. (Stephen, *A General View of the Criminal Law of England* 223)

Stephen aligns the campaign against the withholding meals from jurors with a push towards modernity, arguing that a simpler age would tolerate such treatment. Trollope's novels include expressions of doubt of the intelligence of individual jurors and simultaneously champion majority verdicts to promote independent thought. That he does this not only betrays Trollope's ambivalence as to the future of the jury but also demonstrates how closely these contradictory attitudes are wrapped up with the formation of British identity.

There is an additional significance to Trollope's authorial aside regarding the unanimity requirement, and it concerns its placement in the text. The nineteenth-century jury exists as a black-box and Victorian novelists preserve legal realism by representing this silence in the narrative of the courtroom. However, I would like to suggest that authors use this silence as a narrative technique. For example, the point at which the jury leaves to deliberate is the point in the novel where Trollope includes an authorial aside about the dangers of the unanimity requirement. Trollope shows no need for a legal advisor with regard to the rules governing a unanimous verdict. Instead, he uses the break in the legal procedure to insert his "law." Additionally, as readers we are conditioned to think during the narrative break of a trial, weighing the evidence on our

own. In this moment, Trollope positions his vision for legal reform in the ending of the unanimity requirement, with the hope that it would encourage individual thinking.

In further negotiation of his role as "the finder of fact" in a fictional legal narrative, Trollope responds to the *Saturday Review* critique of *The Three Clerks* in his next novel *Doctor Thorne* (1858):

> It has been suggested that the modern English writers of fiction should among them keep a barrister, in order that they may be set right on such legal points as will arise in their little narratives, and thus avoid that exposure of their own ignorance of the laws, which, now, alas! they too often make. The idea is worthy of consideration, and I can only say, that if such an arrangement can be made, and if a counsellor adequately skilful can be found to accept the office, I shall be happy to subscribe my quota; it would be but a modest tribute towards the cost. (qtd. in Smalley 24)

The suggestion here is one of professional power, as Trollope's monetary contribution would be only a "modest tribute towards the cost" of retaining a legal advisor, as the multitude of legal narratives by other Victorian novelists suggest. That he presents this response in the form of an authorial intrusion rather than a separate article is effective as a tool of disciplinary policing. The authorial intrusion distracts the reader from the plot of the novel, thereby breaking the literary realism and emphasizing the novel's place as fiction. Trollope's response to the lawyer, enclosed within his own space of authority as novelist, acts as a reassertion of his rights as a literary professional critiquing the law.

As in *The Three Clerks*, Trollope's representation of the jury in *Orley Farm* reflects the debate over the future of the jury in legal treatises and the Victorian press. In *An Autobiography*, Trollope describes his feelings towards *Orley Farm*, which was serialized in 1861 and 1862: "The plot of *Orley Farm* is probably the best I have ever made; but it has the fault of declaring itself, and thus coming to an end too early in the book. When Lady Mason tells Sir Peregrine she did forge the will, the plot of *Orley Farm* has unraveled itself; -- and this she does in the middle of the tale" (167). Rather than dismantling the plot, Lady Mason's admission of her guilt shifts the focus of the reader from the actions of the characters to the procedures of the court and provides an opportunity to analyze representations of the jury the novel. In contrast with *The Three Clerks*, *Orley Farm* announces itself as a fictional legal narrative from the beginning; we learn it was going to be called "The Great Orley Farm Case" but the name is not conducive to attracting and maintaining a readership so the text is called *Orley Farm*. From the beginning, Trollope's narrative erases legal classification and deems it unnecessary; when summarizing the first Orley Farm case, the narrator emphasizes that the legal transcript has been edited; "not half the evidence taken has been given here, but probably enough for our purposes" (19). In *The Three Clerks*, Trollope begins to articulate a vision for legal reform. *Orley Farm* demonstrates an expansion of Trollope's legal vision, by including a legal reform conference within the narrative.

Trollope's *Orley Farm* works in competition with the law by illuminating its controversies; Trollope presents multiple models of advocacy from Furnival,

Chaffanbrass, Graham, and the speakers at the fictionalized Birmingham Conference to capture the undetermined nature of the advocate's role. Trollope's depiction of barristers, solicitors and the jury expose the instabilities of the legal system, while his disillusionment with the jury signals his modernity. As discussed in Chapter 1, in the nineteenth century, a tension exists between the vision of the jury as the "palladium of English liberty" and the notion that "There is hardly an assize which would not furnish a chapter for *Punch*" The power of juries declined during the Victorian period; the establishment of county courts substituted single judges for juries and issues previously put to juries were now considered by judges. Along these lines, Chaffanbrass discusses the rising power of judges with his co-counsel Aram: "it's not the juries, Aram. It's the judges. It used not to be so, but it is now. When a man has the last word, and will take the trouble to use it, that's everything" (548). Victorian debate focused on the need for juries, which were optional in some courts, including the new Divorce Court of 1857, as well as the relationship between judge and jury and whether juries needed to obey judges' directions on all legal issues. Victorian commentators were anxious over the jury's role; juries gave no reasons for their decisions and could potentially decide cases on the wrong or capricious grounds. The jury's role as "finder of fact" reveals tensions between the relative roles of fact and feeling upon jury decision making that echo tensions between legal realism and imagination Trollope experienced as a "finder of fact" in the novel.

Trollope signals engagement with legal debate by the way that, in the midst of the great Orley Farm case, Lady Mason's defense team attends the legal reform conference at Birmingham. Critics argue that this conference is based on the first congress of

Brougham's National Association for the Promotion of Social Science in 1857. The transcripts of selected papers from the legal reform conference are significant as they emphasize the need for the standardization of the Victorian Bar. For example, Arthur Symonds, in "On the Recordation of the Law," makes the case that Victorian England has no proper collection of the materials of the law. Instead, the law is contained in "statutes, confusedly heaped together, text-books, often compiled without method and other court reports, parliamentary proceedings and periodicals that it seems only for caution, and not for a rule for our guidance" (Symonds 75). These anxieties are mirrored by Trollope's lawyers and the lack of consensus with regard to the duties of a professional advocate in the Victorian period. Rather than lacking an understanding of the role of an advocate, Trollope's inconsistencies in depictions of lawyers highlight the need for a cohesive, more professionalized Bar.

One fear addressed at the fictional legal reform conference was that with the increased role of lawyers in the courtroom, the jury would be confused by the advocate not telling the truth but rather a version of a story from his own perspective. Here, the distinction is between counsel's role as the defendant's mouthpiece and a legal professional. Brougham discusses counsel's role as a professional stand-in; "the advocate is merely bringing before the court whatever the party would have said if he had been equally gifted and equally experienced in the rhetorical art" (Brougham 165). This theory counters charges by Bentham and Swift that a litigant's counsel is essentially being paid to tell lies (Judge 154). As in *The Three Clerks*, Trollope paints Chaffanbrass in this light, likening him to an assassin who browbeats witnesses so as to fulfill his

professional duty. Clashing with Chaffanbrass on Lady Mason's defense team is Graham, the young member of the bar, who like the reformers at Trollope's fictionalized legal conference, values truth over loyalty to his client; he urges that every lawyer enter court to illuminate the truth. Graham's philosophy is complicated by the advocate's loyalty to his client. When representing Lady Mason, Furnival refuses to seek the truth: "he wished that he knew the truth in the matter; or rather he wished he could know whether or not she were innocent, without knowing whether or not she were guilty" (251). According to Brougham, if a client's case merely has a suspicious appearance, the advocate has no obligation to scrutinize it, and satisfy himself whether it is true or false.

While critics are quick to label Graham as Trollope's ideal attorney because he believes in always telling the truth, Trollope's legal philosophy holds more nuance. In *An Autobiography,* Trollope argues that the "most useful lawyers" are those with the greatest incomes (108). This contention complicates his depiction of the lawyers in *Orley Farm*, for the idealistic Graham, whose "notions no doubt were great, and perhaps were good; but hitherto they had not led him to much pecuniary success in his profession. A sort of a name he had obtained, but it was not a name sweet in the ears of practising attorneys" (175). Graham views Von Bauhr's three hour lecture at the conference as a necessary hurdle to achieving legal reform. Trollope gives us Von Bauhr reflecting on his speech:

> Von Bauhr considers the speech a success, as he had been working on the pamphlet for years and his voice sounded sweet in his own ears. And at

> the end of this elysium, which was not wild in its beauty, but trim and orderly in its gracefulness,—as might be a beer-garden at Munich,—there stood among flowers and vases a pedestal, grand above all other pedestals in that garden; and on this there was a bust with an inscription:—"To Von Bauhr, who reformed the laws of nations." (169)

From this depiction, we expect Trollope to be skewering Von Bauhr for his conceit. But then, he surprises us with the optimism of his authorial aside: "I am inclined, myself, to agree with Felix Graham that such efforts are seldom absolutely wasted. A man who strives honestly to do good will generally do good, though seldom perhaps as much as he has himself anticipated. Let Von Bauhr have his pedestal among the flowers, even though it be small and humble!" (170). The Birmingham conference shows Trollope to be both critical and open to reform, in true "conservative-liberal" fashion. Again and again, when we try to pinpoint Trollope's view of the legal profession, we find a conflicted Trollope. It is this ambivalent attitude toward lawyers that reveals the subtleties of Trollope's satire.

Graham is "The English Von Bauhr," educating his pupil, the wealthy judge's son, Augustus Staveley. Staveley challenges Graham's contention that the English system is unjust, positing that "we consider ourselves the greatest people in the world,—or at any rate the honestest" (176). Graham contends that it is the very Englishness of the justice system that is a stumbling block to reform; the British Bar, as gathered at a legal reform conference, is not open to the proposals of foreign attorneys because of a certain

smugness with regard to its own traditions. As Graham suggests, "those practices in which we most widely depart from the broad and recognised morality of all civilised ages and countries are to us the Palladiums of our jurisprudence" (179). Trollope's modernity is apparent; amid a love for the customs that shape the English identity, he recognizes the danger in blindly following tradition. Unbound by legal custom or precedential reasoning, literature is allowed to be experimental in its discussion of legal ethics and philosophies of truth.

As in the *Three Clerks*, the jury's role as "finder of fact" in *Orley Farm* raises the tension between fact and feeling in the determination of the truth. Trollope addresses the fears of the jury being unduly led by a professional orator in his description of the barrister Furnival's eloquence: "his voice was powerful, his flow of words was free and good, and seemed to come from him without the slightest effort" (81). Trollope also takes up the issue of societal anxiety over the jury's capacity to perform its assigned function by implying a lack of critical observation with regard to Furnival: "those who scrutinized his appearance critically might have said that it was in some respects pretentious; but the ordinary jurymen of this country are not critical scrutinizers of appearance, and by them he was never held in light estimation" (82). This expression of doubt in the jury's critical faculties is juxtaposed with Furnival's appeal to the jury's positive qualities. Furnival appeals to the jury's "intelligence, education, and enlightened justice" (83). The irony of this statement is that, juries of the time were not considered to be capable of careful scrutiny, given the system of jury selection. To serve on a jury, one needed only to be

male between the age of twenty-one and sixty, and own property or land, a home with 15 or more windows or an annual value of at least 20 pounds a year (Bentley 89). Rather than educated men, most juries consisted of small farmers and shopkeepers. This was due to the fact that the educated and wealthy were often exempt from jury duty or alternatively purchased an exemption. A major factor behind the perception that common juries were of poor quality came from the rule that special jurors, those who were the rank of esquire or were bankers or merchants, did not serve on common juries (Bentley 191). Edward W. Cox, in *The Advocate: His Training, Practice, Rights and Duties* (1852), instructs new attorneys as to the intellectual limitations of the jury: "the Advocate should remember that he is addressing minds of whom the majority are certainly inferior to his own in capacity, in subtlety, in quickness of apprehension, in nimbleness of thought and reasoning power – minds neither so well informed nor so skillful" (Cox 444).

When Furnival expresses his confidence in the jury, "that the property of his clients was perfectly safe in their hands," (97) the reader understands this safety comes from the fact that the barrister is able to address the jury, not a faith in the jury's decision-making itself. English juries were understood to be unrepresentative of nineteenth century English society; Trollope alludes to this fact in Furnival's estimation that "he might induce a jury to acquit her; but he terribly feared that he might not be able to induce the world to acquit her also" (215). Those with confidence in the jury, such as Dockwrath are thought of as naïve. Following Furnival's address to the jury, Dockwrath

assures Joseph Mason that "the jury are not such fools as to take all that for gospel" (672). Dockwrath's naïve faith in the jury is matched by his misplaced belief in Joseph Mason's willingness to pay him for his legal services. The "spirit of litigation" in Dockwrath only leads him to quarreling over the dinner bill in a commercial dining room and eventual financial ruin (74).

Trollope's position as "finder of fact" matches that of the jury's fact-finding role, in that the author must negotiate between his two aims—legal realism ("fact") and literary vision ("feeling or imagination"). *Orley Farm* was criticized by nineteenth-century barristers for the inaccuracy with which some legal matters were portrayed in the text. In *An Autobiography*, Trollope frames his discussion of his father, a Chancery barrister, through a description of his chambers: "dingy, almost suicidal chambers, at No. 23 Old Square, Lincoln's Inn, chambers which on one melancholy occasion did become absolutely suicidal" (3). In a footnote, Trollope explains that one of his father's pupils committed suicide in the chambers. In this way, Trollope suggests that a lawyer's chambers may convey or absorb the emotions of its occupants. In *Orley Farm*, Trollope uses Furnival's chambers to illustrate when the emotional collides with the professional. Furnival's theory of advocacy enforces the status quo of English legal practice. However, he has the capacity to bend rules based on matters of the heart; going against legal custom, he meets with Lady Mason in his professional chambers. The image of Lady Mason trespassing into the professional space of the barrister highlights the difficulty of negotiating the advocate's two-fold responsibility as both a stand-in for the

client and as a legal professional. Furnival thinks of Lady Mason as both a woman and a client and his ideas vacillate throughout the text; he imagines both how awful and wonderful it would be if Lady Mason had forged the will. Furnival continues this confusion over the personal and professional in his address to the jury. He begins by offering his opinion of his client's innocence; "I never rose to plead a client's cause with more confidence than I now feel in pleading that of my friend Lady Mason" (685).

Contemporary reviews protest the injustice of Furnival confusing the jury with his personal beliefs. In "Mr. Trollope and the Lawyers," the anonymous author argues that Furnival's expression of his opinion as to the innocence of Lady Mason violates the professional rules for a barrister; quoting Lord Campbell, the author reiterates, "if the advocate withholds an opinion, the jury may suppose he is conscious of his client's guilt; whereas it is the duty of the advocate to press his argument upon the jury, and not his opinion" (156). The unsigned review in the October 11th 1862 edition of the *Saturday Review* discusses Furnival's address to the jury about being a friend of Lady Mason. The author argues that "there is an evident injustice in a man thus mixing up the two characters of pleader and private adviser to the jury. He only confuses the jury, and gives an argument for a particular verdict which he has not the slightest business to give" (*Saturday Review*, 11 Oct. 1862 143). This issue of raising a personal belief before the jury is also treated in the Victorian legal treatises on the morality of advocacy. Brougham focuses on the need for an advocate to work in a representative capacity only, identifying that when an advocate does not uniformly express his opinion, the veracity of evidence comes into question (164). Sir Francis Newbolt, reacting to this breach in

professional etiquette, calls Furnival "a doll, stuffed with sawdust" (54). Furnival's relationship with Lady Mason represents an extreme version of this partiality; yet, this exaggeration serves as an important meditation on the morality of advocacy and highlights the tension between the attorney's dual roles of defendant stand-in and legal professional.

In *Orley Farm*, Trollope's representation of the cross-examination of witnesses continues his critique in *The Three Clerks*; however in this later novel he directly advocates for better treatment of witnesses. To return to the nineteenth-century legal treatise by Cox, new advocates trained in proper defense work in the cross-examination of witnesses are encouraged to adopt a warm approach to questioning witnesses:

> It is marvelous how much may be accomplished with the most difficult witnesses simply by good humour and a smile; a tone of friendliness will often succeed in obtaining a reply which has been obstinately denied to a surly aspect and a threatening or reproachful voice. As a general rule…you should begin your cross-examination with an encouraging look, and manner, and phrase. (377)

This standard of legal practice is violated by Chaffanbrass, who with his "wicked, ill-meaning smile" is notorious for the "browbeating of witnesses" (630). Similarly, the witness Kenneby is told by the judge a dozen times to look at the jury, but he is transfixed by Furnival's face (636). Trollope advocates better treatment for witnesses: "let the witness have a big arm-chair, and a canopy over him, and a man behind him with a red cloak to do him honour and keep the flies off" (673). The unsigned review of

October 11, 1862, in the *Saturday Review* criticizes Trollope on many counts but admits that improved treatment of witnesses is the "one point [on which] Mr. Trollope is perfectly right" (*Saturday Review*, 11 Oct. 1862 143). When the witness Kenneby testifies that he his "nearly sure," Furnival presses him on what he means by "nearly" until Kenneby says he was not certain at all. Trollope likens this technique to "torture" (633), a point which E.S. Dallas, in *The Times*, strongly disputes: "witnesses, no doubt, are sometimes bullied into confusion and even forgetfulness; but Mr. Trollope cannot seriously mean that when a poor fool like Kenneby gets into the box to swear away another person's life or character, his capacity to remember any thing, and the degree in which he actually does remember the particular facts in question, ought not to be tested with the utmost severity" (Dallas 160). Chaffanbrass threatens Bolster, another witness, with her own trial for perjury if she tells him a falsehood. Cox warns advocates against this very practice: "Be it your care to avoid the risk of doing an irreparable wrong, by studiously avoiding, either to charge openly, or to insinuate a charge, of perjury against any witness, unless there is such proof of it as the infirmity of the senses or of the memory cannot explain away" (Cox 457). Chaffanbrass also asks her inadmissible and irrelevant questions about "the good things she had eaten that morning at breakfast, and at last succeeded in obtaining information as to that small but indiscreet glass of spirits" (470). Despite these blatant examples of professional misconduct, Trollope writes in *An Autobiography*, "I do not think that I have cause to be ashamed of [Chaffanbrass]" (111).

As in *The Three Clerks*, the verdict in *Orley Farm* is characterized by silence over how the jury arrived at its decision. Following Lady Mason's trial, the announcement of

the verdict is almost an afterthought; however, Trollope's descriptive strategies allow the moment a force beyond its space in the text. The jury is in its box "but few of the gas-lights were lit, so that they in the court could hardly see each other" (364). This lack of vision calls to mind the opacity of the jury deliberation process, and also exists in contrast to Von Bauhr's eyes "lighted" with inspiration seeking his pedestal among the flowers. Following the several days of testimony in Lady Mason's case, the jury's deliberations are trivial in comparison. For example, the jury quickly moves from a rumored eight to acquit, four for guilty to a unanimous not guilty verdict. This seems to be related to the fact that it is eight o'clock and the judge has left for dinner, while the jury is stuck at the courthouse deliberating without food or drink. After the jury calls the judge from dinner, the reader learns that "the remaining ceremony did not take five minutes…the verdict was recorded, and the judge went back to his dinner" (365). The emphasis on food and drink references the unanimity requirement for juries, and Trollope's protestations of this rule in *The Three Clerks*. In this minimalist representation of the jury, Trollope embodies the cultural anxiety over the black-box of the juror, its inscrutability and its procedures that keep jurors from independent thought.

The theories of advocacy and disillusionment with the jury represented in *The Three Clerks* and *Orley Farm* are Trollope's response to the shifting jurisprudential frameworks of nineteenth-century criminal law. As attorneys become the focal point of jury trials in the nineteenth century, debates over the morality of advocacy appear both in law and literature. When Peregrine expresses his faith in the courts, "what is the purport of these courts of law if it be not to discover the truth, and make it plain to the light of

day?," Trollope responds with "Poor Sir Peregrine! His innocence in this respect was perhaps beautiful, but it was very simple" (498). Trollope satirizes the congress at Birmingham's idealism on legal reform, by stating that the conference will "drive all injustice from the face of the earth" (116). Yet Trollope's text focuses on how the vastly increased role of lawyers in the courtroom accentuates the tension between fact and feeling in the jury's role as "finder of fact," mirroring Trollope's own navigation of legal realism and literary authority as a "finder of fact" of his fictional legal narratives.

THE AFTERLIFE OF *ORLEY FARM* IN THE LEGAL COMMUNITY

To continue the discussion of Trollope's role as "finder of fact" balancing legal realism with literary authority, it is necessary to consider the afterlife of Trollope's fictional legal narratives. Modern literary critics tend to treat Trollope's engagement with the law as superficial. For example, much is made of the fact that Trollope himself faced a rigorous cross-examination, and for that Trollope is thought to have had a personal vendetta against the law. Some recent criticism suggests that Trollope misunderstood the attorney's role as one akin that of a judge, rather than as an advocate. What complicates our assessment of Trollope's treatment of legal themes is an analysis of the afterlife of texts like *Orley Farm* in the legal community. Early criticism from lawyers focused on legal errors; however, if one looks to the use of Trollope's narratives in book chapters, speeches and law review articles written by legal scholars in the twentieth and twenty-first centuries, it is clear that *Orley Farm* has a rich afterlife in the realm of legal ethics. For example, in 2008, Columbia Law Professor William H. Simon

argues that "Law tends to judge categorically, and legal theory sometimes struggles for categorical resolutions, but the predisposition of ambitious fiction is to judge dialectically. [legal ethicist] Michael Luban's account of *Orley Farm* makes it hard to resist the conclusion that the novel is better equipped to explore the conflict" (1368). Modern literary critics discuss Trollope's reception by the legal community in terms of nineteenth-century reviews and fail to consider the implications of *Orley Farm's* use as a tool to teach legal ethics.

When illuminating the subtleties of Trollope's satirical vision, it is necessary to consider how others have viewed legal satire as operating. Frances Theresa Russell in *Satire in the Victorian Novel* reads the satirical legal narrative as professionally-minded, high-brow entertainment: "the Bench and Bar are tempting game for those who enjoy the absurdity of legal tricks and manners" (202). Russell finds the satire to be grounded in a protest against injustice, yet she also sees Trollope as empathetic towards the stunted legal professional (202). Jan-Melissa Schramm finds legal satire such as that in Thackeray's *The History of Pendennis* to acknowledge "a sensitivity to the nuances of the discursive struggle between legal and literary discourses which characterized the 1840s." Schramm sees literary realism and the morality of advocacy as a clash between the professions (287). I'm interested in exploring this relationship between the literary and legal professions not only through the writings of authors like Trollope and Dickens but also through the commentaries of lawyers like Henry Drinker and Sir Francis Newbolt. In addition, considering this rivalry from a structuralist perspective, I am interested in extending my analysis to consider the afterlife of Trollope within the community of legal

scholars. Specifically, Pierre Bourdieu's concept of habitus allows him to move beyond a rigid, deterministic type of structuralism in which social agents occupy positions in a network that dictates their strategies. According to Bourdieu, "habitus is a system of shared social dispositions and cognitive structures which generates perceptions, appreciations and actions" (149). Applying the idea of habitus to the legal profession, lawyers exist as social agents that are the product of the collected experience of the historical field of the law. In this case, the social significance of what Bourdieu terms the "space of lifestyles" allows us to recognize patterns in appropriation of *Orley Farm* as a tool in the teaching of legal ethics.

Sir Francis Newbolt's *Out of Court* (1925) presents an early example of policing between the disciplines. In the chapter "Legal Errors in Fiction," Newbolt mentions a few other texts with legal errors, but then says he cannot find space to discuss errors by a variety of authors because they pale in comparison with the magnitude of the errors in *Orley Farm* (3). Acknowledging the popularity of Trollope's writings in the early twentieth century, Newbolt defends his study of the legal errors within *Orley Farm* as being useful "at least to the profession which he so violently aspersed." Newbolt is vague on how exactly his study will be useful, but as readers we understand his disciplinary surveillance as what Foucault calls a discursive formation. For Newbolt, *Orley Farm* is not only riddled with legal inaccuracies but also a diatribe against the legal profession. Citing the recent reissuing of the original 1862 text as evidence that "no reasoned reply" had been waged against this attack, Newbolt's reply moves directly to small procedural inaccuracies instead of major philosophical points. For example, he argues that the

leading cross-examiner at the Old Bailey could not have had chambers in Ely Place. Even the issues he calls monumental, such as the illegal challenge to the jury by the defending solicitor, seem to be isolated in nature.

If Newbolt attempts to protect the cultural capital of the legal profession through his attack on Trollope, then it is interesting that his polemic against *Orley Farm* also includes an attempt at writing fiction. Newbolt summarizes the events of the novel, and then points out what would have occurred in the real world of law. Newbolt imagines what the English judge Baron Parke would have said about the Mason case. In effect, he creates a new fictional narrative, set apart from his critique by the title "ASTOUNDING POLICE COURT CASE" (21). Newbolt rewrites Trollope's trial scene, complete with dialogue from Furnival and other counsel. In this way, Newbolt reenacts the crossing of disciplinary boundaries Trollope engaged in when attempting to create a narrative with legal realism.

Newbolt seems to disregard *Orley Farm's* place as a work of fiction. He claims his purpose in exposing the errors in the story is to ask the ordinary reader "whether he is satisfied that the writer's knowledge of the subject entitles him to be heard at all" (45). He draws the comparison of a cobbler criticizing the church and a potman criticizing surgeons, when neither will be listened to if they are found to be without knowledge of their subject. According to Newbolt, "the story of *Orley Farm* describes procedure and practice which any one of two thousand barristers, or any solicitor on the Roll, could have told the author was arrant nonsense. He must, I submit, take his place by the potman and the cobbler" (46). Newbolt invokes the collective strength of his profession

with the image of two thousand barristers rallying against Trollope's representation of the law. In addition, by equating Trollope with the potman and the cobbler, he emphasizes the difference in professional standing in Victorian society between the barrister and the author. While Newbolt demands specialized knowledge from the fictional author, Trollope criticizes lawyers for lacking technical knowledge of the law. Newbolt's criticism demonstrates the competition between the legal and literary professions from the perspective of a member of the legal community and complicates our understanding of Trollope's fact-finding role as a novelist.

In 1929, the British attorney Winifred Duke echoes Newbolt's concerns about lawyers in literature in the *Juridical Review*. Reading Newbolt's attack as "shrewd shafts," Duke criticizes fiction writers that allow "attorneys to indulge in grotesque mistakes of procedure and legality. Trollope was one of the greatest sinners in this respect" (3). Like Newbolt, what Duke classifies as Trollope's "ignorance of the law" is limited to the gaps in Trollope's technical knowledge of procedure and does not consider Trollope's higher-level ideas for legal reform or meditations on legal ethics. Noting contemporary reviews of *Orley Farm* that pointed out the legal inaccuracies in the novel, Duke argues that Trollope learned from this wave of criticism. Depicting Trollope as a scolded child that has learned his lesson, he argues that Trollope "was careful not to offend again, and no critic, learned in the law, has pounced upon any legal lapses in *The Eustace Diamonds* or *Phineas Redux*" (4). Although Duke's argument will be treated in my discussion of *The Eustace Diamonds* and *Phineas Redux* in Chapter 3, suffice it to say that Duke forgives Trollope for his legal trespasses: "O earth, lie lightly upon

Anthony Trollope, for he was pleasant in his life, and his legal puppets afford capital entertainment" (36). Throughout, the tone of the article suggests that the lawyer-author has the power to absolve the author that writes about fictional lawyers of his sins. One explanation for this demonstration of power is the way in which Duke's legal habitus allows him to hold a personal stake in the way all lawyers are represented. The extent to which the lawyer's writing on the representation of lawyers in literature is bound up with identity and professional self-worth is expressed in the last lines of Duke's article: "The lawyer in literature remains, in most cases, a mere character out of a book. The lawyer in real life passes from the stage and from his generation's recollection, leaving a tradition, a memory, an honoured name" (39). As a profession with a long history of personal attacks, law produces lawyers highly sensitive to their representation, even if in fiction.

In addition to books, public lectures illuminate the patterns of Trollope's afterlife. In 1949, Henry Drinker, a partner at the law firm of Drinker Biddle, presented a lecture on Trollope to the New York Grolier Club. The essay was published together with "Trollope's America" by Willard Thorp in *Two Addresses Delivered to Members of the Grolier Club.* Drinker also authored the introduction to the 1950 edition of *Orley Farm*, published by Knopf. Drinker begins his lecture by justifying why he will discuss Trollope and the law. As a lawyer, he feels as though he can say something original about the law in Trollope, and he is of the belief that Trollope's objective in the representation of legal themes has not been captured or appreciated by past criticism. Drinker divides Trollope's barristers into three periods, with those before 1860 as the first period, *Orley Farm* as the transition period, and those after 1861 as the third period (51).

He reads Trollope's early representation of barristers as unconvincing stereotypes, while he finds realism in the depiction of barristers in *Orley Farm* and texts after 1861. Several critics attribute Trollope's aversion to lawyers to his own involvement in a trial as a witness. While employed at the postal service, Trollope caught a thief with a marked half-crown. At the trial in Ireland, Trollope was subjected to harsh cross-examination by the barrister Sir Isaac Butt, including the accusation that he had framed the defendant. Drinker argues that the characterization of Chaffanbrass in *The Three Clerks* as a brow-beating cross-examiner, "obviously constituted Trollope's 'compensation' for the realization that Sir Isaac Butt had made him ridiculous in the Irish cross-examination and for the suspicion that Sir Isaac had injured his reputation for honesty" (52). Drinker suggests he is in a unique position to interpret Trollope's attitudes toward lawyers; however, his reliance on purely biographical information results in an analysis that overlooks the possibility of a radical Trollope engaging in a legal critique.

Acknowledging the "numerous strictures" on the legal accuracy of *Orley Farm*, Drinker concludes that it "will be found, on careful examination, to be remarkably free from legal mistakes, except for occasional slips in small matters purely technical, such as would naturally be expected and are readily excusable in a novelist" (53). The technical mistakes that infuriated Newbolt are held of little consequence by Drinker, who instead focuses on literary details; Drinker points out the absence of fanciful names for barristers in *Orley Farm*, in contrast to Mr. Getemthruit in *The Three Clerks*. In this manner, Drinker, though writing as a legal professional, relies on the literary technique of close reading to craft his argument.

While criticism from Newbolt, Duke and Drinker focused on legal errors, *Orley Farm* begins to serve as a jumping off point for professors of legal ethics in the late twentieth century, as evidenced by Thomas Shaffer's *On Being a Christian and a Lawyer*. Shaffer devotes a chapter to representing the guilty, calling it "the oldest and most persistent of moral questions for lawyers" (45). After identifying this longstanding issue, Shaffer immediately turns to a discussion of *Orley Farm*, framing his analysis through the eyes of a legal professional: "Trollope's reaction to Furnival is in many ways the reaction new law students have to us lawyers when they first come to law school and ask us whether it is possible to represent guilty clients. Furnival's reaction to himself is like the reaction law professors have to that question" (46). As a law professor, Shaffer packages the analysis for his classroom audience, labeling Felix Graham, as being like some of his youngest students, while Chaffanbrass is the sort of lawyer the youngest students disapprove of. Shaffer goes on summarize the plot of the novel and evaluate the morality of each of the lawyers. According to Shaffer, Chaffanbrass, Graham, and Furnival "were Christians but not one meets the problem of serving the guilty with a New Testament answer" (53). Shaffer uses the character of Mrs. Orme, to whom Lady Mason confesses the truth, as a benchmark for the ministry lawyers should offer their clients. He identifies the issue for lawyers as "the problem of collaboration" and counsels lawyers to exercise moral influence upon their clients along the lines of Mrs. Orme's counseling of Lady Mason (85). In this way, Shaffer takes a non-lawyer in a fictional legal narrative and holds this figure up as a model for students of legal ethics. Shaffer's use of Trollope is more than an introductory anecdote; he quotes lengthy passages and comes to larger

conclusions about the author. For example, he judges that Trollope "did not believe that law and lawyers have much to do with conscience or with the just resolution of disputes" (81). Shaffer moves directly from analyzing the character of Mrs. Orme to a discussion of the Code of Professional Responsibility and the work of legal ethicists Monroe Freedman and Richard Wasserstrom.

Trollope's treatment of legal ethics has won broad approval by modern legal scholars; nevertheless, one might ask why does a Georgetown law professor who specializes in national security and international law write about *Orley Farm*? According to David Luban, "quite simply, it is a great novel about legal ethics" (891). Luban states that he is bringing a Jewish perspective to challenge Shaffer's reading of *Orley Farm* in *On Being a Christian and a Lawyer*. If Shaffer's main point is that Mrs. Orme embraces the ideals of ministry a lawyer should hold, then Luban understands the novel to condone the idea that "sometimes, good people and good lawyers tell lies" in the act of ministering to their clients (896). Luban takes issue with the premise of Shaffer's argument: Lady Mason is an abhorrent figure. Interestingly, the way one legal ethicist attacks the work of another is through close reading; Luban uses a close reading analysis to argue that Lady Mason is the heroine. Rather than discuss the law of the novel using legal theory, the lawyer presents arguments as literary criticism. Luban reads Lady Mason as a Rebekah figure, strong in the face of patriarchal law; but, he also sees this opposition to the law as remaining unresolved in Trollope's novel (910). On the question of Trollope's sentiments toward lawyers, Luban differs from Shaffer. Shaffer finds Trollope unable to get past the

idea of the lawyers disregard for the truth, while Luban believes this reading does not get at the "full Trollopian complexity (916).

Appearing in *The New Criterion* in 2007, Marc Arkin's "Trollope and the Law" positions Trollope's discussion of the ethics of legal defense as rhetorically of the moment. Arkin finds the treatment of the legal profession in *Orley Farm* to be appropriate to revisit as the twenty-first century British government is engaged in "a root and branch effort to rebalance the criminal justice system in favour of victims, witnesses, and communities" (23). In discussing the history of the criminal defense, Arkin focuses on the great incentive for a criminal defendant to perjure himself. It was not until 1898 that the British criminal defendant gained the ability to give evidence under oath. In effect, the lawyers take the risk of perjuring themselves for their clients so as to maintain society's faith in the power of oaths.

Arkin goes on to provide a detailed summary of the events surrounding the codocil on the Mason estate, as well as a description of each of the attorneys. According to Arkin, Felix Graham "is presumably intended to be the voice of the future—and of the author" (25). In this way, Arkin tries to simplify Trollope's message by aligning the author's voice with Graham's when, in fact, the narrator casts doubt on the idealist philosophies of Graham and resists this sort of classification. Like others, Arkin attacks the Trollope's observation that "I cannot understand how any gentleman can be willing to use his intellect for the propagation of untruth, and to be paid for so doing" (23). Interestingly, he supports his point with a modern day example: he cites the early rush to judge the Duke lacrosse players charged with rape followed by their exoneration as a

cautionary tale that "a lawyer may be wrong and deprive an innocent party, particularly one already guilty in the court of public opinion, of a defense" (26).

If Arkin focuses his discussion on modern controversies in the ethics of legal defense, Asimow and Weisberg use the nineteenth-century trial of Courvoisier to introduce the ethical controversy over criminal defense following a client's confession. The use of the excerpt from Phillips' address to the jury is especially powerful in its emotional rhetoric:

> Over every portion of this case doubt and darkness rest, and you will come to a conclusion against this man at the peril of your souls…. Gentlemen, mine has been a painful and awful task, but still more awful is your responsibility. And the word "Guilty" once pronounced, let me remind you, is irrevocable….It will accompany you in your walks. It will follow you in your solitary retirements like a shadow. It will haunt you in your sleep and hover round your bed. It will take the shape of an accusing spirit, and confront and condemn you before the judgment seat of your God. So beware what you do. (qtd. in Asimow and Weisberg 234)

Following this statement to the jury, one must consider how the Victorian public was outraged to discover Courvoisier had confessed his guilt to Phillips. In addition, this excerpt from the record of the trial is an example of the pressures the jury withstood and speaks to the larger problems the jury faced in reaching a unanimous verdict. In his aggressive defense Phillips also exposed witnesses that he knew to be telling the truth to harsh cross-examination.

Asimow and Weisberg explain that the "reconciliation of professional and moral obligations remains highly contested" when it comes to providing an aggressive defense for guilty clients, and "the often-vague rules of legal ethics, the spotty judicial decisions on the subject, the opinion of the general public, and the views of legal ethicists all conflict" (234). Asimow and Weisberg go on to outline the distinction between strong and weak adversarialism. The authors define rigorous advocacy through the philosophy of Lord Brougham, as exemplified in Queen Caroline's Case in 1820, wherein he stated that the lawyer's duty is "to save that client by all means and expedients, and at all hazards and costs to other persons, and, amongst them, to himself" (235). By contrast, the weak adversarial approach recognizes the individual lawyer's moral code and ultimately privileges the need for justice over zealous advocacy. Asimow and Weisberg explain that the rationale behind this philosophy is the fear that vigorous defense may harm the emotional state of honest witnesses. To support this point, the authors cite *Orley Farm*. Interspersed with examples from state ethics committee opinions is the following footnote: "Mr. Furnival's cross-examination of John Kenneby in Trollope's *Orley Farm* is a vivid example of extreme psychological harm imposed on a witness known to be truthful (246).

What rhetorical strategy calls Asimow and Weisberg to cite a nineteenth-century fictional legal narrative? The juxtaposition of the real and the imaginary is startling. The article does include sections which discuss law and literature, but this section concerns the legal history of criminal defense. A similar effect occurs when Asimow and Weisberg consider the adversarial strategy of the closing argument. The authors note that

Phillips's closing address to the jury in Courvoisier demonstrated a strong adversarial approach, then include this footnote: "Similarly, Mr. Furnival's emotional closing argument in Lady Mason's case in Trollope's *Orley Farm* persuades the jury to acquit a client that he is certain is guilty" (248). This inclusion of *Orley Farm* in the context of legal scholarship gives the text an authority among lawyers, connecting back to discussions of Trollope's role as "finder of fact" and the balance of legal realism with literary authority. Representations of the jury in *The Three Clerks* and *Orley Farm* not only raise issues relating to democracy and judicial wisdom but also provide insight into Trollope's legal imagination. Trollope's meditations on the future of the jury both demonstrate his modernity and function as a juryman's guide for his readers, the potential jurors of England. Trollope's narrative technique surrounding features of the jury, such as its fact-finding and silence at the verdict is an understudied part of his literary vision.

Chapter Three

Trollope as "Finder of Fact": *The Eustace Diamonds* (1871) and *Phineas Redux* (1873)

In the previous chapter on *The Three Clerks* and *Orley Farm*, I discussed how Trollope's role as "finder of fact" compelled him to strike a balance between his goals of legal realism ("fact") and his literary vision ("feeling or imagination"). Yet Trollope's efforts at achieving legal realism only generated further criticism by practicing lawyers of how the legal situations depicted in his novels were riddled with errors in procedure, and suggestions that he was unqualified to write such legal narratives. The critic for the *National Review* elucidates the legal profession's anxiety over Trollope's criticism of the lawyers in *Orley Farm*:

> Mr. Trollope probably meant nothing more than that barristers are sometimes vulgar and unscrupulous, and judges sometimes petulant and overbearing; but he should beware of discussing as a grievance that which is really a necessity, and of grounding on imaginary and impossible facts an imputation on the honour and good faith of a profession which certainly contains in its ranks as many scrupulous and high-minded gentlemen as any other. ("Orley Farm," *National Review*)

Following the publication of *Orley Farm* and the subsequent criticism from lawyers on the inaccuracies in the legal plots, Trollope's work includes meditations on the challenges of achieving legal realism. One such aside in *Phineas Finn* (1868) demonstrates the tension between fact and feeling in Trollope's fiction:

> The poor fictionist very frequently finds himself to have been wrong in his description of things in general, and is told so, roughly by the critics, and tenderly by the friends of his bosom. He is moved to tell of things of which he omits to learn the nature before he tells of them—as should be done by a strictly honest fictionist. He catches salmon in October; or shoots his partridges in March. His dahlias bloom in June, and his birds sing in the autumn. He opens the opera-houses before Easter, and makes Parliament sit on a Wednesday evening. And then those terrible meshes of the Law! How is a fictionist, in these excited days, to create the needed biting interest without legal difficulties; and how again is he to steer his little bark clear of so many rocks,—when the rocks and the shoals have been purposely arranged to make the taking of a pilot on board a necessity? As to those law meshes, a benevolent pilot will, indeed, now and again give a poor fictionist a helping hand,—not used, however, generally, with much discretion. But from whom is any assistance to come in the august matter of a Cabinet assembly? There can be no such assistance. No man can tell aught but they who will tell nothing. But then, again, there is this safety, that let the story be ever so mistold,—let the fiction be ever so far removed from the truth, no critic short of a Cabinet Minister himself can convict the narrator of error. (46)

In this passage, the law is contrasted with the natural, the cultural, and the democratic in society. The poetic reverie of salmon fishing or dahlias blooming is abruptly interrupted

by the line "And then those terrible meshes of the Law!" The use of the word "And" heightens the sensation that the law has crowded out or trespassed on the poetry of the previous sentences. As "meshes" closely follows these physical locations like the opera-house, the reader feels like the snare is physical not metaphorical. The prevalence of figurative imagery in this passage contrasts with Trollope's usual ordinary language. The reader learns that the pilot is a necessity but the use of the pilot is not without problems. Beyond a figurative snare, the physicality of the passage encourages us to imagine the law's meshes as the open spaces between the threads of a net, with Trollope's plot threads woven through the meshes of the law navigating the places of ambiguity. Trollope outlines the challenge he faces of forging a legal plot with the "biting interest without legal difficulties." Here, the "biting" is not only keen but also caustic. The rocks and shoals distinguish the author's work in the law, with the lawyer's work, which is always represented as sedentary reading in dark chambers at an ink-stained desk. This passage captures the tension between fact and feeling that not only determines Trollope's literary authority as "finder of fact" but also is at the foundation of how a jury determines a verdict, and ultimately, how readers understand what it means to have knowledge.

Focusing on Trollope as a "finder of fact" negotiating legal realism and legal imagination, this chapter will explore the author's relationship with the law following the accusations of legal errors raised by lawyer-critics of *Orley Farm*, and the author's subsequent retainer of an attorney, Charles George Meriwether, as a consultant on the legal issues of *The Eustace Diamonds*. In fact, *The Eustace Diamonds* includes a chapter that interrupts the narrative and reads as a legal opinion. The chapter "Mr. Dove's

opinion" is presented as a letter from Mr. Dove, a barrister learned in the law, to the Eustace family solicitor Mr. Camperdown. The letter cites actual legal treatises and cases and is a significant response to previous charges of inaccuracy in Trollope's legal plots. If the previous chapter's discussion of *The Three Clerks* and *Orley Farm* illustrated Trollope's modernity through his vision for legal reform, then this chapter seeks to develop the response to Trollope's fascination with legal plots, through an examination of epistemologies of knowledge in *The Eustace Diamonds* and *Phineas Redux*. It has been suggested that Victorian novelists' interest in the law is tied to the law's practical position in industrial society, as well as the secular tradition in which religion had diminished social authority (Lacey 622). Indeed, Trollope's use of fictional legal narratives allows him to offer a secular moral education to readers, who through the frame of the courtroom plot assume the role of jurors. Both *The Eustace Diamonds* and *Phineas Redux* act as a juryman's guide; treatments of perjury, ignorance of the law, and theories of knowledge implicate faith in communal processes and the community at large.

As other critics have noted, Trollope's novels are brimming over with legal scenes, pointing away claims that the author was ignorant of the law. For example, Simon Gardner uses the fact that Trollope's novels are full of legal material to conclude the author was well versed in the law and may in fact have "assimilated the contemporary judicial pronouncements on the subject" of postal acceptance rules in the 1840s, wherein, in terms of contractual law, a letter takes effect on its mailing as opposed to its receipt (184). Consistent with the idea of Trollope as a serious legal thinker, Albert Pionke argues that Trollope broadcasts a right to assess the law critically through his mastery of

the legal elements of his narrative. Pionke uses biographical details, such as Trollope's active engagement in the Royal Literary Fund, to suggest a reading of Trollope's legal fictions "as complementary, novelistic interventions into the professionalization of writing, and the creation of charismatic authority for writers, especially realistic ones, that is equivalent to, and perhaps comes at the expense of, the prestige accorded to the law" (150). Pionke supports my reading that Trollope's satire is framed as a competition between the legal and literary professions, an argument that receives further justification through an analysis of *The Eustace Diamonds* and *Phineas Redux*. The relationship between lawyers and authors of legal narratives allows for observations concerning philosophies of law as well as the negotiation of boundaries between the personal and the professional. In these later legal novels, Trollope continues to write the "law" of professional responsibility through representations of the lawyers Mr. Camperdown, Mr. Dove, and Mr. Greystock, In addition, Chaffanbrass's evolution from *The Three Clerks* to *Phineas Redux* sheds light on Trollope's shifting relationship with legal realism and legal imagination. In this way, Trollope's representations of the law are significant to understanding not only his social vision but also his literary authority. Specifically, Trollope uses features of the jury, such as the jury's role as the "finder of fact" and its narrative silence, as narrative techniques and descriptive strategies revealing his authorial vision.

FACT-FINDING AND TROLLOPE'S LAWYERS IN *THE EUSTACE DIAMONDS*

In *The Eustace Diamonds*, Trollope depicts two different kinds of lawyers — those that rely on precedent and learning from previous decisions and legal treatises, and those that use instinct and rhetoric to put on a show in the courtroom. With the inclusion of Mr. Dove's opinion, Trollope as "finder of fact" seems to elevate legal realism over legal imagination. At the same time, he demands the same reliance on fact (as applied to legal precedent) over feeling (legal rhetoric) from legal professionals. Yet his narrative techniques also suggest the difficulty of reconciling fact and feeling in a legal strategy, as well as the danger of relying solely on legal precedent at the expense of the natural law tradition. This observation plays into the tension between empirical and non-empirical processes in the law, for much legal rhetoric is motivated by the need to persuade a jury. Trollope employs several narrative strategies to demonstrate the relationship between fact and feeling for legal professionals, including the depiction of attorneys' spaces and the separation of the personal from the professional. In so doing, Trollope writes the "law" of professional responsibility.

Similar to the positioning of Mr. Furnival with regard to Lady Mason, Trollope creates situations where the personal and the professional collide, disrupting the notion of a straightforward attorney-client relationship. In the first meeting between Camperdown and his client Lord Fawn, Camperdown is careful not to alarm his client in his discussion of Lady Eustace's legal troubles; he merely suggests that "there's a stupid mistake about some family diamonds" (131). In his conversation, Camperdown in no way suggests that Lady Eustace is to blame, in a marked contrast to the tone of his letter to the widow

herself. In this case, Camperdown withholds from Lord Fawn his opinion that Lady Eustace is dishonest, as "it is not the business of a lawyer to tell his client evil things of the lady whom that client is engaged to marry" (132). During this disingenuous conversation, Camperdown warns Lord Fawn that under no circumstances can he allow Lady Eustace to retain Mowbray and Mopus – "horrible people; sharks, that make one blush for one's profession" (131). In this way, tiers of legal professionals are distinguished by their levels of misconduct. Trollope also emphasizes the power dynamics between the lawyer and his client: "every word that Mr. Camperdown said was gospel to Lord Fawn" (132). If it is problematic for a client to worship his attorney, then Trollope's humanization of Victorian lawyers in the legal narratives succeeds in pulling them down from any such pedestal.

According to R.D. McMaster, Camperdown's importance in the narrative cannot be judged by the amount of textual space he is afforded (75). The narrative space devoted to Camperdown looms large as his position is closely observed; for example, we learn that to visit Dove in his chambers, "Mr Camperdown rose, and slowly walked across the New Square, Lincoln's Inn, under the low archway, by the entrance to the old court in which Lord Eldon used to sit, to the Old Square, in which the Turtle Dove had built his legal nest on a first floor, clues to the old gateway" (335). When Camperdown leaves the physical space legal professionals inhabit, he is portrayed in the novel as a physical threat. Lady Eustace does not respond to Camperdown's letters, so he goes so far as to force a meeting at her home by holding her carriage door with his hand. Lady Eustace feels as if he already has the power to search her house before he has obtained

the warrant: “at that very moment who should appear on the pavement, standing between the carriage and the house-door, but Mr. Camperdown!” (243). In this way, Trollope draws attention to the attorney’s physical presence; his crossing of professional boundaries is a pursuit based on his feeling towards the woman rather than his knowledge about the law of heirlooms and this aggressiveness feels dangerous. This encounter throws Lady Eustace into hysterics, because of the public nature of the encounter: “All the world of Mount Street, including her own servants, had heard the accusation against her” (245). Stepping outside the bounds of his office, Camperdown’s actions are driven by emotion rather than fact.

If the lines between the lawyer’s personal and the professional roles are critical to the development of the law of professional responsibility, then Trollope’s depiction of Lizzie’s cousin, the barrister Greystock, serves to probe these boundaries. Lord Fawn tries to walk away from his engagement with Lizzie, and when Greystock questions him, he says he will consult his lawyer. Greystock’s response is that he can't see why a gentleman should require an attorney to tell him what to do in such a case. Coming from an attorney, the observation gets to the heart of the challenge of inhabiting both the roles of a gentleman and a professional. In addition, Greystock is torn between his professional role as an attorney and his role as a confidant of his cousin. For example, when Greystock consults with Lizzie about the diamonds in Scotland, he betrays the conflicting nature of his interests: "if you ask my opinion as a lawyer, I doubt whether any such proof can be shown. But as a man and a friend I do advise you to give them up" (277). Camperdown’s word becomes the law on which the case turns for Lord Fawn, an

assumption that Greystock questions: “but Mr. Camperdown isn't the law and the prophets, nor yet can we allow him to be judge and jury in such a case as this” (191). Instead of relying on Camperdown’s appraisal of the case, Greystock wants empirical proof through documentation and statements submitted to counsel. Rather than a broad satire on lawyers, Trollope’s *The Eustace Diamonds* explores the tension between empirical and non-empirical philosophy.

Greystock is also represented as a wanderer, geographically and emotionally from the law. For example, Greystock walked to the Temple to work on “mastering the mysteries of some much-complicated legal case which had been confided to him, in order that he might present it to a jury enveloped in increased mystery. But, as he went, he thought rather of matrimony than of law” (155). Outside of his professional space, Greystock’s thoughts on the law are displaced by emotion, as he imagines what the community would say about his wedding: “oh, heaven!—there has Frank Greystock gone and married a little governess out of old Lady Fawn’s nursery!” (158). Greystock’s consideration of the merits of marrying for love rather than wealth engages the natural law tradition and pushes aside legal positivism: “the complicated legal case received neither much raveling or unraveling from his brains that night” (157).

In *An Autobiography*, Trollope says that he is not trying to represent the ideal but the real (245). If there is a lawyer that approaches the ideal in *The Eustace Diamonds*, it is Mr. Dove. Trollope describes in great detail the "legal nest" of the barrister "Turtle Dove":

> Mr. Dove was a gentleman who spent a very great portion of his life in this somewhat gloomy abode of learning. It was not now term time, and most of his brethren were absent from London, recruiting their strength among the Alps, or drinking in vigours for fresh campaigns with the salt sea breezes of Kent and Sussex, or perhaps shooting deer in Scotland, or catching fish in Connemara. But Mr. Dove was a man of iron, who wanted no such recreation. To be absent from his law-books and the black, littered, ink-stained old table on which he was wont to write his opinions, was, to him, to be wretched. The only exercise necessary to him was that of putting on his wig and going into one of the courts that were close to his chambers;—but even that was almost distasteful to him. He preferred sitting in his old arm-chair, turning over his old books in search of old cases, and producing opinions which he would be prepared to back against all the world of Lincoln's Inn. (335)

Dove does not appreciate experience in the physical world beyond his chambers; he would rather remain in his office than engage with the community. Isolated in his chambers, Dove is able to devote himself entirely to the pursuit of accumulating specialized legal knowledge. Yet Dove's sanctuary exists as a shelter from the community, thereby presenting an extreme version of a lawyer motivated by fact, untouched by the motivations to resort to legal rhetoric. The alienation of fact from feeling in a legal professional is demonstrated through the depiction of attorneys' space;

Trollope contrasts Dove's sedentary isolation with the wanderings of the attorneys Camperdown and Greystock.

To understand the nuances of Trollope's criticism of the legal profession, it is necessary to examine the relationship between literary and legal discourse during the nineteenth century, which underwent evolution in conjunction with the rise of professionalism. In "The Way We Lived Then: The Legal Profession and the 19th-Century Novel," Nicola Lacey's major argument is that the rise of professionalism for the Victorian Bar emerged from attempts at collectivizing professional accreditation as well as the evolution of technical expertise in criminal law (622). Her belief that nineteenth-century realist novels shine a unique light on this facet of criminal law advancements supports my major claim that realist texts like those by Trollope, in capturing the ordinary, also grasp important elements of legal history (Lacey 623). Trollope's attack of defense lawyers as lacking technical knowledge ties into the profession's attempts to modernize in the nineteenth century. According to Lacey, professions whose practitioners needed to demonstrate mastery of the relevant binding precedents of their specific areas of legal expertise to thrive were caught in a "double bind…For the most obviously legally exclusive techniques were precisely those whose complexity and technicality opened them up to the Benthamite critique of law as deliberately fostering archaic and obfuscatory fictions" (616). In other words, pressures upon lawyers to specialize through cultivating technical knowledge needed to be balanced with the need to preserve a sense of the law's practicality among the Victorian public. Trollope seems suspicious of a profession where attorneys can distance themselves from the precedents

and underlying principles of the law and traffic in legal rhetoric, and *The Eustace Diamonds* is the author's meditation on this state of affairs. Trollope pinpoints an uneven usage of the common law amongst legal professionals as a source of professional weakness in the Victorian Bar.

The Victorian legal historian J. H. Baker suggests that one cannot speak of a legal profession until the rise of standards for professional responsibility (139). The first ethics regulation of lawyers was the Statute of Westminster in 1275, imposing standards of honesty and a duty of confidentiality. The London Ordinance of 1280, applying to all lawyers practicing in London courts, issued standards for respect and competence. According to the London Ordinance, lawyers must "make proffers at the bar without baseness and without reproach and foul words and without slandering any man" (Baker 140). Another pamphlet, written around 1285 and called the Mirror of Justices, expanded on the standards of conduct within the courtroom, suggesting the lawyer "will not by blow contumely, browl, threat, noise, or villain conduct disturb any judge, party, sergeant, or other in court, nor impede the hearing or the course of justice" (Baker 140). What is interesting about the Mirror of Justices is that opinion is split as to whether the document was intended as a treatise or a parody. In any event, pamphlets and laws alone did not dictate professional conduct; the lawyer's oath added to the shape of the state of legal ethics.

Similarly, Trollope's critique in *The Eustace Diamonds* that attorneys are ignorant and uneducated in the technical aspects of legal matters arose out of a longstanding criticism of the legal profession. Parliament passed an act in 1402 regulating the

admission of attorneys to reduce "the great number of Attornies, ignorant and not learned in the Law" (Baker 141). The 1402 Act included a "do no falsehood" oath that continued through the seventeenth century. The oath addressed issues like using false evidence, intentionally delaying litigation, providing a full and thorough representation and charging reasonable fees. The lawyer's oath was significantly shortened in the eighteenth century, creating "a void in the written articulation of standards" (Baker 141). In this manner, Trollope's writing fills in where the details of ethical standards had been erased. If serjeants operated under a variety of standards regulating conduct, barristers were overlooked by Parliament and lightly regulated by the courts. Until 1980, English barristers did not have a written code of conduct; rather, barristers "relied on conduct and etiquette handed down by received wisdom" (Baker 144). Without any document codifying the expectations as to a barrister's conduct, Trollope's writing, being read and discussed by lawyers, enters the conversation of received wisdom. In effect, Trollope carves out professional space by providing a written code of conduct for the legal profession.

As James Kincaid suggests, *The Eustace Diamonds* "is Trollope's most insistent, least relaxed novel; the narrator chooses every opportunity to generalize and to teach" (*The Novels of Anthony Trollope* 201). On the spectrum of lawyers, Trollope's portrayal of Arthur Herriot represents the relationship between the legal profession and its practitioners' understanding and application of the law. Frank Greystock's friend Arthur Herriot is younger than him and has so far achieved no success as a barrister, but he carries around Stone and Toddy's "Digest of the Common Law" (273). Trollope's

discussion of Herriot highlights the disconnect between knowing the law and practicing the law:

> The best of the legal profession consists in this;--that when you get fairly at work you may give over working. An aspirant must learn everything; but a man may make his fortune at it, and know almost nothing. He may examine a witness with judgment, see through a case with precision, address a jury with eloquence, --and yet be altogether ignorant of the law. But he must be believed to be a very pundit before he will get a chance of exercising his judgment, his precision, or his eloquence. The men whose names are always in the newspapers never look at their Stone and Toddy, --care for it not at all,--have their Stone and Toddy got up for them by their juniors when cases require that reference shall be made to precedents. (273)

The more one probes the law as presented in Trollope, the more one recognizes his ambivalence about lawyers and the state of the law. For example, after Trollope's representation of the seasoned lawyer needing to know "almost nothing," one would expect his depiction of the learned barrister Dove to be idealized. Dove's legal opinion represents the epitome of the lawyer as learned technician in the narrative; however, I would suggest that the placement of this chapter casts doubt on the idea of Dove being the ideal lawyer. Dove believes that Lady Eustace cannot claim the diamonds as paraphernalia because their value is excessive as compared with her income and degree. Camperdown tries to discuss the details of the will, but Dove stops him "declaring that he

could not venture to discuss matters as to which he knew none of the facts" (342). In so doing, Trollope warns against this kind of extreme reliance on practicing law and providing legal advice solely upon knowing precedent at the expense of natural law tradition. Rather than labeling any attorney in Trollope's work his vision of the ideal, I would argue that his sweeping attention to a variety of legal professionals only emphasizes the many pitfalls of the legal profession. My reading is supported by Marco Wan's argument that "the novel seems to question the desirability of being bound not only by Mr. Dove's opinion, but by any opinion at all, whether legal or otherwise" (211).

The chapter entitled "Mr. Dove's opinion" is preceded by a personal exchange between the barristers Frank Greystock and Arthur Herriot, for whom "Stone and Toddy,—with a little tobacco, have been all [his] comfort" (291). Rather than discuss the law together, the colleagues engage in an extensive examination of matters of the heart. Mr. Dove's opinion is introduced into the narrative following this highly personal exchange between the two professionals. After reading Dove's opinion, the matter of the necklace intrudes into Camperdown's personal life; it interferes with his holiday with his family at a little cottage in Dawlish. Trollope's return to this personal detail in the final paragraph of the chapter entitled "Mr. Dove's opinion" has the effect of isolating the legal opinion in the text, by sealing it between two domestic scenarios. In other words, Mr. Dove's legal opinion in the narrative is like his professional space, as Trollope's arrangement mirrors the artificiality of a complete separation of legal precedent from emotion and legal rhetoric. This containment of the legal opinion demonstrates the tension for Trollope as "finder of fact" between legal realism and legal imagination—by

controlling the legal opinion Trollope isolates the force of legal precedent in the novel and preserves his literary authority.

Using Carol Lansbury's discussion of Trollope's postal service, Lauren Goodlad concludes that "before he ever published a novel, Trollope was already usurping the legitimate authority of the law" (qtd. in Pionke 142). Goodlad is referring to way in which postal reports were expected to follow the three-part structure of a legal declaration as defined by John Frederick Archbold's *A Digest of the Law Relative to Pleading and Evidence in Actions Real, Personal and Mixed* (1821), causing lawyers to question the professional boundaries between the law and the postal service. In *An Autobiography*, Trollope announces that he has never printed a word as his own that was written by others, with the exception of Dove's opinion in *The Eustace Diamonds* (213). On that opinion, authored by Charles Merewether, the present Member for Northampton, he writes: "I am told that it has become the ruling authority on the subject" (213). In this statement, Trollope demonstrates the challenge between balancing legal realism and legal imagination in his novels. Trollope suggests that Merewether's legal opinion in *The Eustace Diamonds* holds weight in the legal community; however, as an author, Trollope does not have full ownership over this achievement. Instead, Trollope states that he has been told the opinion has become important; the suggestion is that lawyers or others close to the legal profession have relayed this fact to him, as he is not in a position to discover this importance himself. The language makes Trollope's fiction a legal authority, while at the same time distancing him from the legal insider's perspective. The sentiment is triumphant in light of the fact that Trollope was criticized for his faulty legal research and

reasoning in the plot of *Orley Farm*. The statement also supports the idea that Trollope's use of the law extends beyond satire and sensationalism to connect to the shaping of his authorial persona. Yet the statement also demonstrates the impact of "those terrible meshes of the Law" on the establishment of literary authority, as witnessed through the competition between the literary and legal professions, and Trollope's negotiation of the role of "finder of fact" in his fictional legal narratives.

Pionke argues that the wealth of case law and precedential reasoning in the Dove opinion contrasts with the "poetic, picturesque, chivalric" law of *The Eustace Diamonds*, and that this distinction between the truths derived from common law and romantic law is at the heart of Trollope's legal critique (145). I disagree with this reading of the law in The *Eustace Diamonds*, because it is difficult to reconcile with Trollope's protestations about attorneys' lack of specialized legal knowledge. While Pionke views "the impeccable accuracy" of Dove's opinion as a mechanism by which Trollope asserts his authority over the law, errors in the opinion complicate this reading. Alan Roth, in analyzing the law of Dove's opinion, finds fault in the legal research and reasoning, but he does not address Trollope's statement of the opinion's rise as a ruling authority. For example, he analyzes the selection of cases cited in the opinion and comes to the conclusion that several of the cases do not speak directly to the issue at hand. Roth speculates, "Perhaps Mr. Dove subscribed to the belief that a greater number of citations make an argument more persuasive" (884). Trollope was not in a position to determine whether the opinion written for him by Charles Merewether was compelling; in a sense, he had to place blind trust in an attorney in much the same way his characters do in his

novel. According to Roth, Dove gets the legal issues on heirlooms right but misconstrues the issues with regard to the necklace as paraphernalia and an inter vivos gift. Roth opines that "had Trollope known, he would certainly have been disappointed" (885). I would agree that disappointment might come into play, but the quality of the opinion also points to representations of ordinariness that Trollope sought to represent within his novels. Trollope the narrator devotes much energy in *The Eustace Diamonds* to defending the anti-heroic natures of his characters: "A picture of surpassing godlike nobleness—a picture of a King Arthur among men—may perhaps do much. But such pictures cannot do all. When such a picture is painted, as intending to show what a man should be, it is true. If painted to show what men are, it is false." The image is rising "not, indeed, to perfection, but one step first, and then another, on the ladder" (419). In this way, Dove's imperfectly crafted legal opinion fits perfectly within the larger context of Trollope's realist novel. It is difficult to know what editing process occurred once Merewether delivered the opinion to Trollope, but Trollope does not state that the opinion was reprinted in its entirety without edits. For this reason, the errors Roth identifies may reflect Trollope's role as "finder of fact" balancing legal realism with legal imagination. In other words, what Roth labels as Merewether's errors could reflect Trollope's "law." While Roth confirms that Dove's opinion is a correct application of the law of heirlooms, he does take issue with Dove's statement that "the law prefers custom to devise" (887). According to Roth, English courts believed that heirlooms were created by custom and not devise, but at the same time the acceptance of heirlooms created by devise was a common practice. If Dove's opinion exaggerates the distinction between custom and

devise, then it can be said to be exploring the tension between natural law and positive law that is prevalent throughout the novel.

Dove argues that the jewels are not heirlooms, as they were only mentioned as such in a will by the great-grandfather of the present baronet who died in 1820, and therefore he could not have devised them to the present claimant. Lady Eustace may be able to claim the diamonds, not as a gift, but as "paraphernalia belonging to her station" (299). Confident in the seriousness with which Trollope engages with the law, McMaster believes that Trollope's reading of Blackstone on paraphernalia may have sparked this essential piece of the legal plot (80). By the time Camperdown consults Dove for a legal opinion, Camperdown has already called the necklace an heirloom many times. When Lizzie recounts this fact, asking Greystock why Camperdown called the necklace an heirloom, her cousin defends Camperdown for his honesty. According to Greystock, Camperdown said what he thought, and Greystock admits that as a lawyer he also did not know what qualified as an heirloom. Greystock is far enough along in his career that he does not consult Stone and Toddy; however, he is also proven wrong on a technical legal question. In this representation the way lawyers know things, Trollope includes a definition of honesty—ignorance of the law is not an excuse.

Trollope emphasizes that if lawyers distance themselves from legal precedent and depend on legal rhetoric, it could become acceptable to repeatedly identify an item as an heirloom because of misinformation. In the context of his meditations on the decline of the virtue of honesty in society, Trollope sees the increased role of legal rhetoric as the culprit. In *The Eustace Diamonds,* Trollope explicates the problems that arise when

experienced lawyers practice law with blind disregard to the precedents. Part of Trollope's teaching in this novel is that legal advocacy cannot emphasize legal rhetoric at the expense of reliance on legal precedent; lawyers cannot claim ignorance of the laws. Ignorance of the law is Lizzie's defense, and although society does not forgive her for violating natural laws of morality, Trollope also acknowledges the difficulty of holding a layperson to knowledge of the law when the lawyers do not have it themselves. The differences between the professional backgrounds of Dove and Camperdown are vast, with Dove being learned in the law and Camperdown being more of a businessman than a legal scholar, but Trollope emphasizes that they share common ground in their paternalistic attitude towards their clients: "The outside world to them was a world of pretty, laughing, ignorant children; and lawyers were the parents, guardians, pastors, and masters by whom the children should be protected from the evils incident to their childishness" (336). By the end of the novel this worldview is turned on its head, and lawyers are shown to be ignorant children. By removing Camperdown from a position of paternalistic authority, Trollope makes room for himself as author as moral guardian to his reading public. In fact, a similar statement of protection is echoed in an narratorial aside on authorship: "To make them and ourselves somewhat better-not by one spring heavenwards to perfection, because we cannot so use our legs,-but by slow climbing, is, we may presume, the object of all teachers, leaders, legislators, spiritual pastors, and masters" (419).

In *Novels Behind Glass: Commodity Culture and Victorian Narrative*, Andrew H. Miller takes up the discussion of the diamonds as a commodity in the text. Miller

suggests that Trollope emphasizes the narrative invisibility of the diamonds in a number of ways, most notably through the iron safe in which Lizzie transports them to Scotland. According to Miller, Trollope's frequent allusions to the diamonds without any description or representation in the narrative of the diamonds themselves, draws attention to the ways in which "the language of possession itself percolates through the novel, defining characters' moral and psychological identities as well as their relation to the material environment" (161). I would argue that the diamonds are not specifically described to the reader so as to illustrate their unstable standing across the legal profession in *The Eustace Diamonds*. By keeping the diamonds off stage or out of the frame, Trollope is representing the uncertainty of dual philosophies of law—lawyers relying on legal rhetoric define the diamonds as an heirloom while those lawyers relying on legal precedent do not. Greystock and Camperdown both circulate inaccurate opinions about the diamonds because they are not informed about the specialized law. The lesson that Trollope demonstrates about the need for specialized legal knowledge translates to the anxiety over the jury in how the jury makes its decisions—not seeing the diamonds only magnifies the ways in which each imagined juror scrutinizes the case without actually seeing the facts on their face. According to Miller, "Trollope repeatedly satirizes attempts to check (the circulation of commodities): the immense energies spent in forming public opinion, in imposing legal measures, and in physically protecting the Eustace diamonds from theft all prove futile" (163). Like Miller, I am interested in the amount of energy spent forming public opinion, but I see it as a meditation on the limits

of a jury to bring justice, and the echoes of a medieval system where the jury's facts came from first-hand accounts.

PERJURY AND THE JURYMAN'S GUIDE

Miller, like others, sees Trollope's morality as hinging upon principles of honesty; his scholarship analyzes how Trollope comes to define an honest understanding of ownership in *The Eustace Diamonds* (163). I've chosen to discuss this novel because its legal plot centers on perjury, a crime that fully implicates the issue of whether the public can have faith in the jury. As discussed in Chapter 2, Trollope was especially troubled by the unanimity requirement for juries; the assumption was that forcing unanimous verdicts encouraged jurors to lie under oath. Walter Kendrick affirms my choice of text, arguing that "of all Trollope's novels, *The Eustace Diamonds* exhibits the most intense concern with truth and falsehood" (154). Like Lady Mason, Lady Eustace commits perjury; when the iron box housing the diamonds is stolen, she swears that the diamonds were inside, when in fact they were under her pillow. When confessing her crime to Lord George, Lizzie acts shocked that she could be prosecuted for perjury: "she hardly knew what perjury was. It sounded like forgery and burglary. To stand up before a judge and be tried, and then to be locked up for five years in prison! What an end would this be to all her glorious success?" (150). Wendie Ellen Schneider demonstrates how the sanctions for perjury, "feared as both a temporal crime and a spiritual sin," relaxed in the mid-eighteenth century. Witnesses that formerly would have been disqualified from testifying because of the significant risk of perjury began to have their voices heard. Trollope's

preoccupation with perjury comes at a time when the laws saw great change in how perjury was being treated, a change contemporaries saw as "nothing short of revolutionary" (Schneider, “Perjurious Albion” 343). Schneider attributes the possibility of these shifts, to among other things, "a coincidence of a pervasive extralegal reverence for sincerity." Yet Trollope’s *The Eustace Diamonds* shows disillusionment with the reverence surrounding sincerity, as evidenced by nineteenth-century reviews. One review calls the plot “a depressing story” (Spectator 26 Oct.) while another labels this tale as Trollope at “his most cynical self” (Saturday Review 16 Nov.).

If Trollope is cynical about the preservation of honesty as an ideal, then *The Eustace Diamonds* is part of the nineteenth-century pushback against perjury. In England, the new Divorce Court was said to be the “playground of perjurers,” with the expectation that women would automatically deny all accusations of adultery. In attempts to safeguard against perjury, the Divorce Court utilized a Queen's Proctor, who appealed to the community to acquire information about the parties to the suit that otherwise might go undiscovered. In British India, the punishment for perjury was corporal —a tattoo reading "I am a perjurer" inked on the perjurer’s forehead (Schneider “Secrets and Lies”). The threat of prosecution for perjury looms over Lady Eustace throughout the narrative, but in the end "nothing was done, and Lizzie triumphed in her success" (ED 353). In this manner, Trollope engages with the pressing question of implementing effective strategies to curb perjury. Jeremy Bentham's *Rationale of Judicial Evidence* (1827) outlines the penalties in use for perjury during the early nineteenth century. He discusses a physical incentive against lying, as deception causes

physical pain in the deceiver. He also discusses a moral sanction of the shunning of liars by the community. Bentham's argument is that these kinds of measures prove ineffective in preventing perjury. In *The Eustace Diamonds*, Trollope appears to pick up this debate over effective measures of discouraging perjury:

> She would not have minded it much if she were simply to be called a liar. But he had told her that she would be accused of –perjury. There was something frightful to her in the name. And there were, she knew not what dreadful penalties attached to it. Lord George had told her that she might be put in prison,—whether he had said for years or for months she had forgotten. (339)

That Lizzie would not mind being called a liar recalls Bentham's argument that community sanctions are ineffective. Yet the prison penalties likewise fail to deter Lizzie from perjuring herself. She recognizes the name of the crime as threatening, but the penalty seems so insignificant to her that she cannot recollect whether the prison term will be months or years. Even an awareness of the legal consequences to perjury fails to ensure a witness's honesty.

Part of Lizzie's forgetfulness regarding the penalties for perjury emerges from her discussion with Lord George on the uneven reach of the law. Lizzie is surprised that Lord George plans to follow the letter of the law rather than the code of a gentleman; he promised to keep her story about the diamonds secret, but his intention is to abandon that promise if he is ever asked to sit in the witness box. Lizzie appeals to Lord George for help and he tells her about the selective application of the law: "if you were nobody, you

would, of course, be indicted for perjury, and would go to prison. As it is, if you will tell your story to one of your swell friends, I think it very likely that you may be pulled through" (465). According to Lord George, he cannot assist her because he is "not near enough to those who wear wigs" (466). As other critics have noted, this episode shows Trollope engaging in a serious commentary over the ability of the law to obtain equitable results (Lacey 625). Trollope's suggestion that honesty before the law trumps the code of a gentleman not only demonstrates his modernity but also provides a juryman's guide to his readers.

Ultimately, Trollope's guide to his readers, the potential jurors of England, demonstrates ambivalence with regard to Lizzie's prosecution for perjury. Major Mackintosh, the police captain, coaxes a confession from Lady Eustace, and then advises her that "if she were summoned and used as a witness, there would be no attempt to prosecute her for the—incorrect versions—of which she had undoubtedly been guilty" (501). He further recommends that she go to Camperdown to tell the truth. What Lord George calls perjury, Major Mackintosh calls an incorrect version of facts; here, it is the official who uses the non-legal term for the offense. Part of Lizzie's refusal to admit fault is an unwillingness to conceptualize her misdeeds within a legal context: "Lizzie, in defending herself to herself, felt that, though cruel magistrates and hard-hearted lawyers and pig-headed jury men might call her little fault by the name of perjury, it could not be real, wicked perjury, because the diamonds had been her own" (518). The layperson strives for a flexibility that the law does not provide— the idea that a "wicked" perjury exists in opposition with a harmless perjury is not a way of thinking that positive law

supports. Lizzie is exempted from prosecution for perjury only on the ground that she would be called on to incriminate herself in giving evidence against criminals whose crimes had been graver than her own. This exemption leads her to reason that "People, after all, did not think so very much of perjury,—of perjury such as hers, committed in regard to one's own property" (523). It is the novel's more villainous figures, Mr. Emilius and Mrs. Carbuncle, who take the strongest stand against Lizzie's perjury. Mr. Emilius tells Lady Eustace that accusations of perjury are "calumnies spoken so openly behind your back" and he uses this position as a means of offering assistance in the way of marriage. Mrs. Carbuncle is of the opinion that "when a woman has committed perjury, nothing too bad can possibly be said to her. You are amenable to the outraged laws of the country, and it is my belief that they can keep you upon the treadmill and bread and water for months and months,—if not for years" (525). After declaring this judgment against Lizzie, Mrs. Carbuncle commits her own immoral act, borrowing a large sum from Lizzie without promise of repayment. Mrs. Carbuncle's reaction to Lizzie's perjury is reminiscent of Mrs. Val's cry for the hanging of Alaric in *The Three Clerks*; in both instances, Trollope suggests that the law does not allow for shades of grey in its sentencing. Rather than condemning or championing Lizzie's perjury, Trollope presents the complexities of telling the truth in a legal system that does not guarantee equitable results. In this way, Trollope is inviting the active participation of his readers and encouraging scrutiny of the law.

If Trollope encourages his readers to question the law, Lizzie endlessly professes her ignorance of the law. Kendrick emphasizes the fact that Lizzie is "absolutely,

alarmingly ignorant" of the law at the beginning of the novel and remains so as the narrative progresses (5). I would argue that Lizzie's ignorance of the law plays into our sense of the law's instability; without a clear pronouncement as to the legal status of the jewels from the legal professionals in the novel, knowledge of the law seems meaningless. Lizzie discusses her case with every character in the novel, and in so doing, showcases her ignorance of the law. For example, she instructs Mrs. Carbuncle on the vagaries of the law: "As for an heirloom, anybody who knows anything, knows that it can't be an heirloom. A pot or a pan may be an heirloom;--but a diamond necklace cannot be an heirloom. Everybody knows that, that knows anything" (207). Mrs. Carbuncle immediately dismisses Lizzie's interpretation of the law as applied to a pot and pan, suggesting its irrationality.

One can read Lizzie's expression of ignorance as willful, as Kendrick does, or one can consider Lizzie's ignorance in light of the debate over the codification of the law as opposed to common law. The argument against the common law was that in an era of ever changing legal reforms, it was difficult for citizens to know the law (Lobban, "Old wine" 114). In the early nineteenth century a battle was raging over the future of the law, and whether the law should be found in the common law or alternately be codified. Proponents of the common law cited the uncertainty surrounding the development of a code with the need to develop alongside of it a new jurisprudence. The fear also existed that unlike the evolution of common law, the code would be limited to reflecting one historical moment (Lobban, "Old wine" 119). This interpretation of Lizzie's ignorance of the law fits my assessment of Trollope's legal vision as being conflicted. As "finder of

fact," Trollope must balance legal realism and legal imagination, but achieving legal accuracy is challenging when the definition of law is in flux.

The argument of Lizzie's ignorance of the law is also complicated by Lizzie's summoning of trial by witness, an ancient form of justice where the jury's facts came from first-hand accounts. When Lizzie and Lord Fawn abandon all faith in their lawyers, Lizzie appeals to the community to administer justice. Initially, Lord Fawn wholeheartedly trusted Camperdown and more generally, lawyers as a group, to be correct; but once he learns that his attorney was wrong about the necklace being an heirloom, he changes his view: "the lawyers were all wrong about it. As far as I can see, lawyers always are wrong" (194). In conversation with Lord Fawn, Lizzie echoes Lord Fawn's distrust calling Camperdown a "cunning old snake" (195). Following this disillusionment with the legal system, Trollope introduces the concept of community justice as an alternative to a justice system run by Victorian lawyers. Lizzie suggests to Lord Fawn that they choose a citizen whom they both trust to resolve the breach of promise issue of their engagement. Lord Fawn ultimately rejects this idea, although he admits Lady Glencora's word meant almost as much for him as it did for Lizzie. In addition, Lizzie threatens to have her friend the Duke of Omnium, head of the liberal nobility in England get involved, as Lord Fawn is a liberal. As Lizzie's attempts to take her claim to the community fail, it is no wonder that Lizzie lacks personal investment in the community. Frank explains to his cousin that thieves ought to be discovered for the good of the community. Lizzie's responds: "I don't care for the community. What has the community ever done for me?" (458). Rather than a simple sign of female ignorance,

Trollope builds Lizzie's character as questioning how to achieve justice in Victorian England. After her hopes in an ancient system of justice are dashed, she shows the same disillusionment with the community as she does with the lawyers. It is no surprise that contemporary reviewers found *The Eustace Diamonds* to represent Trollope's most cynical self.

At the end of the novel, John Eustace calls Lizzie "a very great woman; and, if the sex could have its rights, [she] would make an excellent lawyer" (531). It is difficult to determine whether John Eustace, who employs Camperdown, should be the judge of an excellent lawyer. Indeed, Eustace's assessment of Lizzie's potential as a lawyer aligns with a contemporary review in *The Examiner* that asks if Trollope is "an unintentional ally" for the women's movement ("A review of *The Eustace Diamonds*" 135). Despite Trollope's cynicism, his characterization of Lizzie as an interrogator of the law allows the reader to interpret Eustace's comment with some sincerity. Ultimately, in writing the "law" of professional responsibility, Trollope sees the ideal lawyer not as Dove, relying strictly on legal precedent, or Camperdown, in his dependence on emotion and legal rhetoric, but as Lizzie, in her willingness to question all legal philosophies.

"SURELY, MR. GREYSTOCK, YOU WOULDN'T WISH IT TO GO BEFORE A JURY": ANXIETY OVER THE JURY AS "FINDER OF FACT" IN *THE EUSTACE DIAMONDS* AND *PHINEAS REDUX*

Beyond Trollope's lawyers, Dove's legal opinion, and the historical representation of perjury, it is necessary to consider the role of the jury in Trollope's later novels. "Surely, Mr. Greystock, you wouldn't wish it to go before a jury" (191). Discussing his legal options with Greystock, Lord Fawn utters these words with regard to

extricating himself from his romantic entanglement with Lizzie. To understand why Lord Fawn would be threatened by having his case heard by a jury, it is necessary to consider the community's anxiety over the jury as represented by Trollope in *The Eustace Diamonds*. For example, Lady Eustace's friend Lord George is suspected of colluding with her to steal the diamonds. Despite his innocence, Lord George is overwhelmed by an imaginary guilt: "a look of guilt is creeping over me. I have a sort of conviction growing upon me that I shall be taken up and tried, and that a jury will find me guilty. I dream about it; and if, as is probable, it drives me mad, I'm sure that I shall accuse myself in my madness. There's a fascination about it that I can't explain or escape" (318). Lord George's anxieties point to the manner in which the role of the jury captivated the Victorian public. Trollope captures the sense that any citizen can be wrongly accused and put in front of a jury; consequently, every member of the Victorian public shares an investment in assuring that juries are competent and produce just results.

In *The Eustace Diamonds*, the narrative is framed by community judgment. The opening sentence positions Lizzie in relation to her peers: "it was admitted by all her friends, and also by her enemies—who were in truth the more numerous and active body of the two—that Lizzie Greystock had done very well with herself" (12). If what others believe of Lizzie is assigned a high value in the novel, then this phenomenon contributes to the anxiety over the competency of the jury. The Victorian jury is composed of members of the community. Without specialized training in how to serve on a jury, what keeps jurors from deciding cases on the same capricious grounds as they engage in gossip? In narrating how the public makes decisions about people, Trollope is revealing

how jurors may also make decisions about guilt or innocence. This examination connects back to my argument about how the jury exists as a "finder of fact"; yet, there is no way to determine if the jury relies on fact or feeling to make its determinations. It is this anxiety over how information gets processed by the community that I see as prevalent in Trollope's narrative. In this manner, Lady Eustace sits before an imagined jury throughout *The Eustace Diamonds*, as each character has an opinion on the case. For example, Lady Glencora hears a version of the story of the Eustace diamonds in which Lord Fawn retreats from the engagement once Lady Eustace's possession of the diamonds is questioned. This falsehood receives emphasis through a narratorial intrusion: "The reader will be aware that this statement was by no means an accurate history of the difficulty as far as it had as yet progressed. It was, indeed, absolutely false in every detail; but it sufficed to show that the matter was becoming public" (203). In this way, Trollope extends his discussion of epistemologies of knowledge, from the lawyers, to the public, and by extension, to the juries.

The fickleness of public opinion in *The Eustace Diamonds*, as a demonstration of an imagined juror's decision to depend on an uncertain blend of fact and feeling, is most clearly represented through Lizzie's court proceedings. Lizzie is required to testify in front a magistrate regarding her perjury. Although questioned by a barrister with "the blandest and most dulcet voice" (545), Lizzie is brought to tears by his cross-examination, even though the magistrate pointed out that she had confessed her own false swearing a dozen times. The barrister asked her "almost in a whisper, and with the sweetest smile, whether she was not engaged to marry Lord George," (419) with him as

her accomplice in the robbery. Greystock appeals to the magistrate to end this vulgar line of cross-examination; subsequently, Trollope alerts us that "there was a scene in the court" (419). The magistrate and the public are swayed by Lizzie's "bursting into tears and stretching forth towards the bench her two clasped hands with the air of a suppliant" (544). When Lizzie retreats to Scotland to avoid further court appearances, the public that at first sympathized with Lizzie's plight during her court appearance now turns on her: "when they hear that they were to be robbed of the pleasure of Lady Eustace's cross-examination, there arose almost a public feeling of wrath that justice should be thus outraged" (571). William Cohen reads this situation as betraying the capriciousness of public opinion, functioning in a marketplace of sorts. Cohen argues that *The Eustace Diamonds* operates under a "scandal economy," wherein the quantification of public confidence in the novel allows one issue to impact its value against another issue (183). To illustrate, Cohen notes that Trollope writes "since the two robberies, public opinion had veered round three or four points in Lizzie's favour, and people were beginning to say she had been ill-used" (qtd. in Cohen 183). This quantification of public confidence can also be read as echo of the quantification that goes on during jury deliberation, as the verdict splits and eventually reaches unanimity. The urge to quantify public opinion may seem ridiculous, but it points to the difficulty in achieving a unanimous verdict during collective decision making and the subjectivity of a jury's unwitnessed, undocumented thought process.

The final scene of *The Eustace Diamonds* completes the sense that the narrative is framed by the perceptions of the community. Mr. Bonteen criticizes the inadequacy of

the law which allows Lady Eustace to remain free from punishment. Mr. Palliser argues that he did not follow the case closely, and therefore is not entitled to offer an opinion. Lady Glencora's retort is "if people only spoke about what they attended to, how very little there would be to say" (581). Again, the idea is that all of Trollope's characters have an opinion about Lizzie's case without full knowledge of the facts. Lord Chiltern says "I never was so sick of anything in my life as I am of Lady Eustace...And all that I can hear of her is, that she has told a lot of lies and lost a necklace" (587). The Duke of Omnium suggests that Lady Eustace will have difficult times ahead, and Trollope emphasizes this sentiment in the final sentence of the novel: "In this opinion of the Duke of Omnium, the readers of this story will perhaps agree" (588). By framing the narrative with public opinion, Trollope forces his readers to grapple with the ways that judgments are made, and to consider the sway of communal processes alongside positive law.

Ayelet Ben-Yishai concedes that, as demonstrated by Alexander Welsh, Jan-Melissa Schramm, and Jonathan Grossman, the empiricism of Victorian legal consciousness shaped the realist novel (96). While the rules of evidence develop in concert with the realist novel, Ben-Yishai contends that "residues of older, collective modes of legal reasoning—fundamental to the idea of a common law—still held epistemological sway, even when cloaked in empiricist rhetoric" (96). Ben-Yishai discusses the rise of legal positivism, as supported by Jeremy Bentham and John Austin, which acknowledges only human made law as opposed to natural law that relies on morality and religious beliefs of what is right and wrong. According to Austin, jurisprudence is concerned with positive law but often "confounded with objects to which

it is related by resemblance, and with objects which are also signified, properly and improperly, by the large and vague expression law" (85). In his questioning of the superiority of empirical philosophy, it is these non-literal treatments of law—what Austin terms "the law of honor" or "the law set by fashion" that Trollope explores. Austin defines positive law as the commands of a sovereign, with commands defined as "a signification of desire" wherein "the party to whom it is directed is liable to evil from the other, in case he comply not with the desire." The establishment of commands by a sovereign or sovereign body of persons to a member or members of the "independent political society" is what Austin argues distinguishes positive law from other forms of law (88). In other words, Austin favors jurisprudence whose approach is premised upon a single ruling authority, which represents a push back against community-oriented definitions of the law. As Ben-Yishai argues, positive law is tied to nineteenth-century discussions of empiricism: "the law itself thus becomes an empirical question rather than an ethical or moral one" (98). I agree with Ben-Yishai's claim that "despite the unquestioned hegemony of positive law in legal thought and doctrine in the nineteenth century, however, residues of nonpositive and nonempirical legal processes were still extant" (99). Ben-Yishai sees Trollope as channeling these communal processes in *The Eustace Diamonds* through a determination of fact based on communal knowledge, or gossip. I'm focused on how Trollope demonstrates the challenge of separating fact from feeling in actual representations of communal process, through the jury.

In the trial of the diamond thieves Benjamin and Smiler, Trollope retains the silence of the jury in the Victorian courtroom—as readers we are in the audience and not

made privy to the jury's deliberations. The closing argument from Benjamin's attorney sets up for readers the choice between fact and feeling. The argument is based on a condemnation of Lady Eustace, with the reasoning being that the jury cannot convict the men of stealing the diamonds because Lady Eustace escaped punishment. This argument is a blatant appeal to feeling without regard to fact, as the culpability of Lady Eustace is unrelated to the theft by Benjamin and Smiler. In this way, Trollope offers for his readers a test following the moral education of his juryman's guide. The verdict in *The Eustace Diamonds* represents the triumph of fact over feeling: "The vigour, the attitude, and the indignant tone of [Benjamin's attorney] were more even than his words;—but, nevertheless, the jury did find both Benjamin and Smiler guilty, and the judge did sentence them to penal servitude for fifteen years" (574). Despite the voluminous legal rhetoric of the counsel for Benjamin and Smiler, the jury issues a guilty verdict. The arrangement of this sentence emphasizes the silence of the verdict, as the jury's verdict is hidden in the middle of a sentence in a clause sandwiched between a description of legal rhetoric and the punishment from the judge. The understated pronouncement and lack of description of the jury gives the verdict a universal quality, allowing the reader to enter the position of juror.

In *Phineas Redux*, Trollope explores the role of the jury through Phineas Finn's trial for the murder of Mr. Bonteen. The jury comes to the forefront of the plot following a request for a delay in the trial proceedings. A telegram reports the opportunity for hearing new evidence, but the man must come from Prague to testify, while the jury

remains confined. The foreman of the jury protests, arguing that "the system under which Middlesex juries were chosen for service in the City was known to be most horribly cruel—but cruelty to jurymen such as this had never even been heard of" (457). In this fictionalized account, Trollope paints a compelling picture of how poor conditions for juries impede justice, as one of the jurymen states he is willing to believe the telegram without the testimony. Once the court reconvenes, the foreman again wages a complaint against his treatment expressing "a hope that the Legislature would consider the condition of things which made it possible that twelve gentlemen all concerned extensively in business should be confined for fourteen days because a mistake had been made in the evidence as to a murder" (471). The Chief Justice tries to placate the jury by reminding them of "the importance and glorious British nature of their position," (471) at which point one of the jurymen interrupts to tell his story of hardship. For a fortnight, the solo salesman has lost his business while serving as a juror. Due to his financial sacrifice, he receives the sympathy of the courtroom. In this manner, *Phineas Redux* differs from the other fictional legal narratives treated in this dissertation, as the jury is given a voice. Yet the verdict in this text also differs from the other texts in the lack of suspense. By the time Madame Goesler returns from Prague with the new evidence, it is apparent that Phineas has been wrongly accused. Indeed, this turn of events is reflected in the verdict: "the jurymen put their heads together; and the foreman, without half a minute's delay, declared that they were unanimous, and that they found the prisoner Not Guilty" (475). In the wake of a simple verdict comes a narratorial aside:

> And Phineas was discharged. According to the ordinary meaning of the words he was now to go about his business as he pleased, the law having no further need of his person. We can understand how in common cases the prisoner discharged on his acquittal,—who probably in nine cases out of ten is conscious of his own guilt,—may feel the sweetness of his freedom and enjoy his immunity from danger with a light heart. (476)

Ultimately, Trollope is unable to instill full confidence in the power of the jury to issue just verdicts, as Phineas's acquittal is cause to imagine all the previous acquittals of guilty prisoners. This skepticism over the competency of the jury raises issues related to Trollope's social vision, such as the definition of honesty in modern Victorian society and the epistemologies of knowledge. Additionally, Trollope's representation of the jury is central to his literary vision, as his negotiation of the role of finder of fact mirrors that of the jury's weighing of fact and feeling. In balancing legal realism and legal imagination, Trollope navigates "the terrible meshes of the law." Through his examination of conflicting philosophies of law and the struggle between legal precedent and legal rhetoric, he writes the "law" of professional responsibility for Victorian lawyers.

THE RETURN OF CHAFFANBRASS IN *PHINEAS REDUX*

To close my discussion of Trollope's fictional legal narratives, I would like to consider the evolution of the barrister Chaffanbrass from *The Three Clerks* to *Phineas*

Redux. As in *Orley Farm*, Trollope's depiction of Chaffanbrass's attorney-client relationship raises the issue of professional responsibility for lawyers. As in Lady Mason's trial, the reader is told that Phineas Finn is not guilty of the murder he is on trial for; in this manner, the central legal question of the novel is not whether the character is guilty but rather, whether the court will provide a just verdict. Phineas's trial hinges on his character and the value of community justice. According to Phineas, if he is a murderer in the eyes of the public then the jury can hardly punish him further through hanging. In fact, most of the members of Parliament and some of Phineas's friends believe him to be guilty of murder. When Chaffanbrass visits Phineas at the gaol, the prisoner appeals to his counsel to "make men believe that [he is] innocent of this crime" (429). Chaffanbrass assures him that he will make the jury believe in his innocence; however, Phineas protests against this outcome: "Comparatively I do not care a straw for the twelve men. It is not to them especially that I am anxious that you should address yourself" (430). Significantly, Phineas admits that although he is trained as a lawyer, he "may not altogether understand the nature of an advocate's duty to his client" (430). This exchange is essential as a retort to critics who argue that Trollope does not understand the role of a lawyer and the scope of his duty to his client. Trollope is suggesting that even a lawyer himself cannot fully appreciate the attorney-client relationship until he is placed in the position of the accused. Only the accused can understand the impulse for a verdict that not only convinces the jury but also accomplishes some kind of moral acquittal under natural law philosophy. Chaffanbrass is moved by the eloquence of Phineas in his request for a higher form of justice:

> Here I am, and to-morrow I shall be tried for my life. My life will be nothing to me unless it can be made clear to all the world that I am innocent. I would be sooner hung for this, with the certainty at my heart that all England on the next day would ring with the assurance of my innocence, than be acquitted and afterwards be looked upon as a murderer. (432)

Although Chaffanbrass is touched by the expressiveness of his client, he insists that the one goal is the acquittal by the jury, whereas Phineas continues to object —"The one object that I shall have before me is the verdict of the public" (434). Rather than argue that Trollope lacks an understanding of the role of the advocate, Cathrine Frank reads Phineas's arguments about public opinion as "bluff and bravura…the necessary fictions or roles that sustain his private subjectivity during his very public trial;" (41) however, it is more useful to see a conflicted Trollope wrestling with the tensions between natural law and positive law as evidenced in evolving theories of advocacy offered through the barrister Chaffanbrass. In this way, Trollope writes the "law" of professional responsibility.

Chaffanbrass expresses professional doubt over his defense of Phineas, not because of the evidence (he admits there really is nothing to connect Phineas with the murder) but because of the unpredictability of the jury: "But there is no saying nowadays what a jury will do. Juries depend a great deal more on the judge than they used to do. If I were on trial for my life, I don't think I'd have counsel at all" (426). According to

Chaffanbrass, judges, not juries, control verdicts as "Jurymen are afraid of having their own opinion, and almost always shirk a verdict when they can" (426). The result is "mealy-mouthed" verdicts that lack conviction, with the suggestion that a shift in the criminal law is to blame —"when forgery ceased to be capital" (426). Instead of portraying Chaffanbrass in *The Three Clerks* as a vessel dispensing legal rhetoric, Trollope recognizes that the legal rhetoric of lawyers is premised on the idea that jury's are active listeners ready to form an opinion, not shirking verdicts and submitting to the judge.

Along these lines, Chaffanbrass's utility is made apparent in his cross-examination of Lord Fawn. As a witness, Lord Fawn feels "in the clutches of the odious, dirty, little man, hating the little man, despising him because he was dirty, and nothing better than an Old Bailey barrister - and yet fearing him with so intense a fear!" (443). But Lord Fawn is a "bad witness" — he wishes to speak the truth, but his slowness and haughty demeanor "taught the jury to think he was anxious to convict the prisoner" (444). Unlike his senseless browbeating of Bolster in *Orley Farm*, Chaffanbrass's browbeating in *Phineas Redux* tears through Lord Fawn's pomposity to reveal the truth to the jury, suggesting that Trollope sees the utility in aggressive examination under certain circumstances. Indeed, Chaffanbrass explains the art of courtroom rhetoric as being "just the trick of the trade that you learn, as a girl learns the notes of her piano. There's nothing in it. You forget it all the next hour. But when a man has been hung whom you have striven to save, you do remember that" (447). Trollope continues to paint Chaffanbrass's

craft in a sympathetic light, as his address to the jury includes "real unaffected tears" and at the end of his seven hour oration he is "taken home speechless by one of his daughters and immediately put to bed" (452). Contemporary reviews swoon over Trollope's new vision of Chaffanbrass:

> There are one or two touches of Mr. Trollope's finest touches in the sketch of the skillful, dirty, old man, exerting all his powers to get Phineas Finn acquitted, while yet himself more than half convinced of his guilt…These new lights on the character of our old friend Mr. Chaffanbrass, whom in previous novels Mr. Trollope has certainly not delighted to honor, are touches of real genius. (*Spectator,* 3 Jan.1874, 378)

Lacey supports this reading of the shift in Trollope's portrayal of Chaffanbrass, arguing that the characterization of Chaffanbrass in *Phineas Redux* highlights the "ambivalence between lawyers as necessary and skilful professionals versus lawyers as hired assassins or meddlers with truth—masking a deep uncertainty about the role of professional representation in mid-Victorian Britain" (627). Even if the portraits of lawyers in *Phineas Redux* are, as McMaster suggests, "more psychologically sophisticated," (61) Trollope's ambivalence towards lawyers remains strong. What is most significant about the change in Chaffanbrass's character from *The Three Clerks* to *Phineas Redux* is the evolution itself, for it indicates Trollope's serious engagement with the ethics of professional responsibility and the development of his "law".

If Trollope's fictional legal narratives offer a competing vision of "law," then a final point for discussing the competing visions of law and literature as means for

achieving justice occurs in the trial scene of *Phineas Redux,* where Chaffanbrass questions the novelist Mr. Bouncer. Chaffanbrass asks the writer about works of fiction whose plots include premeditated murders such as *Hamlet* (1603), *Macbeth* (1611) and Bulwer Lyton's *Eugene Aram* (1832). He cites these murders in literature to argue that murder without premeditation is unnatural: "thinking about it a long time! I rather think he was. Those great masters of human nature, those men who knew the human heart, did not venture to describe a secret murder as coming from a man's brain without premeditation" (440). McMaster suggests that this scene resonates with Trollope's own experience as a trial witness while working for the postal service. In that trial, Trollope is cross-examined by Sir Isaac Butt, who pursues a line of inquiry regarding the author's fictional lawyers in *The Macdermots of Ballycloran* (McMaster 58). Beyond this biographical similarity, this scene serves as a reminder of fiction's role as a vehicle for competing models of justice. Bouncer concedes that he would not violate probability in a novel; in this way, the rules of fiction are brought into direct confrontation with legal rhetoric in the courtroom.

This scene of obvious confrontation between law and literature works to emphasize the subtleties of the legal satire in the rest of Trollope's oeuvre. Trollope's legal imagination includes his "law," his juryman's guide, his vision for legal reform and his representations of lawyers that act to fill the void of law pertaining to professional responsibility. While his legal vision becomes more sympathetic and complex in the more than a decade between *The Three Clerks* and *Phineas Redux,* Trollope remains conflicted about the purpose and failings of the modern law, the role of the jury, and the

role of legal professionals in Victorian society. Yet his negotiation as a "finder of fact" of legal realism and legal imagination is critical to appreciating the modernity and nuance of his artistry. Trollope's "law" teaches us that we cannot let lawyers trust legal rhetoric over legal precedent just the same as we cannot let juries rely on the emotional responses to legal rhetoric over a careful analysis of the facts of the case. In the midst of these teachings, Trollope is also trying to balance his own role as author of a fictional legal narrative, balancing his use of legal realism with his legal imagination. To the extent that this tension for the author also represents a sort of fact versus feeling dichotomy, his narrative indicates an awareness of the challenges inherent to negotiating the conflicting philosophies of obtaining and narrating truth.

Chapter Four
Dickens's Juries and the Rhetoric of Law and Literature

In the second half of the nineteenth century, there was a tension between Blackstone's vision of the jury as the "palladium of English liberty" and the sense that jury verdicts were seen as fodder for ridicule by the Victorian press. Dickens's representation of the British jury shifts between these two poles, from ambivalence in *The Pickwick Papers* (1836-7) to a positive representation in *A Tale of Two Cities* (1859). This shift can be seen as Dickens's response to the Victorian debate over the future of the jury, which reached a high point in the debates leading up to The Common Law Procedure Act of 1854. By making civil jury trials optional in the superior courts, The Common Law Procedure Act of 1854 triggered a flurry of legal treatises calling for similar reforms to jury trials in criminal courts. Dickens's shifting representations of the jury offer a unique lens through which to understand not only his political and social vision but also his narrative style and characterization. Representations of the jury in literature are significant as they raise questions about class tensions, democracy and the formation of the British identity. In this way, Victorian authors create their own juryman's guidebook to educate their readers, the potential jurors of England. My analysis considers features of the jury, such as the jury's role as "finder of fact," the silence of the jury, and the lack of voir dire in England leading to truly random jury selection, to argue how these features matter in Dickens's style and characterization—Dickens as a "finder of fact" and theorizing silence, especially as related to the

significance of minor characters. We should care about jury scenes in Dickens because they do more than just reflect tensions in Victorian society about class, democracy and British identity formation; representations of the jury offer an important and unconsidered perspective on Dickens's literary vision.

Trollope's fictional legal narratives were written during a time when disillusionment with the jury was at a high point; however, Dickens's representations of juries span a different historical time. Dickens's early legal fiction preceded the decline of the jury occurring in the second half of the nineteenth century. Indeed, the two pieces of legislation instrumental in the decline of jury trials were enacted after the publication of *The Pickwick Papers*—the County Courts Act of 1846 and the Common Law Procedure Act in 1854. The County Courts Act of 1846 standardized local courts, making juries in local courts optional. Most litigants chose bench trials instead of trial by jury, fueling the fire for the argument of making jury trials optional in superior courts (Hanly 255). Following the consent of the parties to the lawsuit, the Common Law Procedure Act of 1854 allowed superior court judges to decide issues of fact at their discretion. Dickens's representations of the jury in his novels in the second half of the nineteenth century act to instill confidence in communal processes. Explanations for this shift implicate Dickens's social and literary vision—his serious engagement with the law as "finder of fact" and his increased investment in the betterment of the common man as educator of the citizenry himself.

In Chapters 2 and 3, I examined how Trollope's representations of the jury are important to understanding both his social and literary vision. Specifically, I focused on

the ways in which the silence surrounding the jury is more than an indication of legal realism; authors use this silence as a narrative technique. In Dickens, the significance of narrative silence during the jury's deliberations needs to be considered in conjunction with his use of minor characters. From Sam Weller to Madame Defarge, Dickens's minor characters resonate with readers, sometimes overshadowing the protagonists. In Dickens's novels, the individual members of the jury are minor characters, but as a deciding body, the juries' verdicts are a driving force of Dickens's fictional legal plots. In *The One vs. the Many*, Alex Woloch discusses "the essential significance of Dickens's distorted and exaggerated minor characters and the over-significance of minor characters within the novels….by examining how minor characters claim so much imaginative space within Dickens's novels" (125). Although Dickens's minor characters claim a lot of imaginative space in his novels, the members of the jury are unseen, muted, and do not take up any space in the narrative. Dickens deemphasizes the minor characters of the jury in his narrative so as to give his readers the opportunity to envision themselves as the jury.

Much scholarly criticism has already been written on Dickens and the law, from Dickens's lawyers and the melodrama of the trial to the ethics of Dickens's representation of crime and his hopes for legal reform. However, nothing has yet been written on Dickens's juries applying a law and literature methodology. Part of a law and literature methodology is to question why an author turns to the law when constructing narratives. I'm going to address this question with a specific argument and then an analysis of a larger conversation that illuminates the hurdles of performing and

legitimizing interdisciplinary scholarship. Specifically, this chapter continues the discussion of the previous chapters on the role of the jury in the Victorian novel. Rather than revisiting the detailed portraits Dickens creates of lawyers which have received much critical attention, I am interested in analyzing the narrative strategies surrounding the jury in Dickens's writing, which to date have not been properly treated by critics.

To fully appreciate Dickens's role as "finder of fact" balancing legal realism with literary authority, it is necessary to consider the afterlife of Dickens's fictional legal narratives. The second half of this chapter considers the rhetoric of law and literature in literary and legal criticism on Dickens. Law and literature scholars find that scholarship on Dickens "exemplifies the Law and Literature agenda" (Petch qtd. in Dolin 288). There is a disconnect between how scholars of English literature understand the significance of the law in Dickens and how legal scholars view the importance of law in his works. According to Jan-Melissa Schramm, a Professor of English, we cannot read Dickens's *Bleak House* to receive an accurate picture of the law, because he exaggerated the ills of the legal system as necessary to serve his satirical aims so as to showcase "the heuristic power of fiction" (Schramm, "Dickens and the Law" 277). Similarly, English Professor Jonathon Grossman argues that "Pickwick's visits to the law offices and the court are less about legal reform than about the novel's form and the establishment of the middle-class, professional author in the Victorian period" (172). By contrast, law professors use *Bleak House* in law and literature seminars to teach legal history and ethics. An analysis of the law and literature scholarship on Dickens's fictional legal

narratives is an excellent point of departure to understand the agenda of this interdisciplinary study as well as gain insight into the rhetoric of law and literature.

"THE WELL-BREAKFASTED JURYMAN": A HUMOROUS APPROACH TO CULTURAL ANIXETY OVER THE JURY IN *THE PICKWICK PAPERS*

The nineteenth-century debates surrounding the jury addressed in Chapter 1 receive consideration in Dickens's legal narratives, specifically *The Pickwick Papers*, *Oliver Twist* (1837), *Bleak House* (1853) and *A Tale of Two Cities*. In *The Pickwick Papers*, Dickens's representations of the jury are humorous, but at the same time reveal a cultural anxiety over the role of the jury as a non-empirical, communal process of obtaining justice. The critical literature on law and *The Pickwick Papers* tends to focus on the lawyers, particularly Dodson and Fogg. Indeed, Mrs. Bardell's lawyers in *The Pickwick Papers* captured the public's imagination so much so that a jury awarded damages to a solicitor against a client who called him "a regular Dodson & Fogg" (Fyfe 44). Beyond the lawyers, Susan Shatto provides legal context for public civil disobedience at the time of *Pickwick*. Writing on the scene in which Miss Witherfield alerts the magistrate that Pickwick and Magnus will duel, Shatto concludes that Dickens's depiction of the duel is part of "the dark side" of legal history in *The Pickwick Papers* (152). In this way we see that Dickens's novel treats all aspects of legal proceedings inside and outside of the courtroom, including the role of the jury.

Significantly, the chapter narrating *Bardell v. Pickwick* begins with a joke at the expense of the jury; Snodgrass and Perker instruct Pickwick on the importance of a

"well-breakfasted juryman" on the grounds that hungry jurymen always find for the plaintiff (398). Perker explains the rationale behind this theory:

> If it's near dinner-time, the foreman takes out his watch when the jury has retired, and says, "Dear me, gentlemen, ten minutes to five, I declare! I dine at five, gentlemen." "So do I," says everybody else, except two men who ought to have dined at three and seem more than half disposed to stand out in consequence. The foreman smiles, and puts up his watch:—"Well, gentlemen, what do we say, plaintiff or defendant, gentlemen? I rather think, so far as I am concerned, gentlemen,—I say, I rather think—but don't let that influence you—I rather think the plaintiff's the man." Upon this, two or three other men are sure to say that they think so too—as of course they do; and then they get on very unanimously and comfortably. (399)

Perker, by his exaggerated repetition of the word "gentlemen," emphasizes how the jury members were not truly considered gentlemen. The question of who could serve on a jury remained a contested issue throughout the Victorian period. The Juries Act of 1825 adjusted the property requirements to allow £10 freehold and £20 leaseholders to sit on juries. Indeed, this relaxation of the property requirement allowed uneducated men to serve as jurors, while at the same time, many educated men such as clergy, lawyers, doctors, and military officers sought exemption from jury service (Clarke 11). The true "gentlemen" were able to excuse themselves from jury duty. Perker's joke is a dismissal of not only the jury's social standing but also the integrity of the jury as an instrument of

justice. According to Perker, the jury cares little of justice—it can be easily swayed into a verdict depending on how hungry its members had become. At the root of Perker's gibe is the Victorian public's anxiety about placing its trust in a jury of its fellow citizens. This episode from *The Pickwick Papers* also connects to conversations in legal treatises and the Victorian press about unanimity and the policy of withholding food from a jury until it has reached a decision. As discussed in Chapter 1, the common practice of withholding of food from a jury until it issued a unanimous verdict was widely condemned in the Victorian press as a form of torture.

In comparison to Trollope's outrage over the starvation of jurors in *The Three Clerks*, Dickens's representation of the jury may appear to be harmless jesting. Yet humor is a narrative technique Dickens uses to assuage societal fears about the competency of the jury. According to James Kincaid, Dickens's humor in his early novels includes a serious social critique. For example, Kincaid argues that humor in *The Pickwick Papers* acts "to reinforce the feeling of freedom and the opposition to order and bureaucratic sterility" (5). In the courtroom scene, laughter causes the reader to feel empathy towards the jury and highlights the distinction between the flaws of the jury and the flaws of the lawyers. The jury is represented as human, whereas the lawyers Dodson and Fogg manufacture sympathy through staged theatrics. *The Pickwick Papers* is more than a comic novel and more than a scathing attack on the attorneys Dodson and Fogg; representations of the jury engage elements of the national character**.** Mary Poovey discusses Dickens's relationship to national character as not only defining to his readers what was common to all Englishmen but also the novels themselves being representative

of these "national" qualities (110). In his fiction, Dickens acknowledges that "Englishness" is not easy to pinpoint, throwing the extent to which he can identify the "national" character into question. Englishness is dynamic, as suggested by Catherine Hall's definition of "Englishness" as not a "fixed identity but a series of contesting identities, a terrain of struggle as to what it means to be English." (qtd in Clemm 110). In this way, Dickens's ambivalence over the competency of the jury reflects this grappling with British identity formation.

Grossman argues that in the trial scene of *The Pickwick Papers*, "the only position that matters for Dickens is the lawyers'" (177). As evidence, he cites Dickens's cursory description of the jury's place in the courtroom (Pickwick saying "And that…that's where the jurymen, sit is it not?") in comparison to the extensive descriptions of the lawyers. As further proof of Dickens's focus on the lawyers, Grossman notes that in his illustration Phiz leaves out the rest of the courtroom (Grossman 178). I would argue that during the trial we are continuously reminded of the jury's presence as a "black box" in the legal process. For example, when Mr. Winkle enters the witness box, he bows to the judge. The judge tells Winkle to "look at the jury" (404). The judge's direction reminds the reader that Dickens provides little description of the decision-making body. As the jury is repeatedly referred to in the trial, Dickens's withholding of a description of the jury itself enacts the public's frustration over the mystery surrounding a jury's deliberation. The narrative silence of the members of the jury is accentuated because Dickens's minor characters usually hold exaggerated force in his novels. In this way, Dickens provides the narrative space for the reader to assume the role of juror.

Consistent with the idea of Dickens's juries being important, ever present, yet simultaneously faceless and unknown, the first event which Dickens describes at Pickwick's trial involves the jury. After "a great deal of bawling," only ten members of the jury were ready to be seated, prompting the counsel to "pray" to the judge to "award a *tales*" (400). According to Holdsworth, to "award a *tales*" is to request that the court require bystanders (*tales de circumstantibus*) to provide the requisite number of persons on the jury. In the seventeenth century, as long as one summoned member of the jury appeared the rest of the jurors could be tales-men. In Pickwick's case, a special jury has been summoned; therefore, as dictated in an Act of 1826, the tales-men could be taken from the common jury (Holdsworth 129). In the nineteenth century, tales-men were called "guinea pigs" as they waited at the court to serve as jurors and earn a guinea. As "finder of fact," Dickens balances legal realism with legal imagination. Here, the realism of invoking the *tales* allows Dickens the narrative space to exercise his legal imagination. Under the law, the crowd in a courtroom does have the potential to administer justice, and Dickens uses this law in the development of his fiction—this tradition accounts for the attention the crowd receives in Dickens's fictional trials, especially *A Tale of Two Cities*. In this instance, Dickens's technique of following legal procedure is not limiting but rather invites the element of randomness into his novels. Randomness in Dickens has many forms, but as far as the jury goes, Dickens's representation of the jury reminds us of its randomness. In addition to the use of *tales*, the English jury, unlike the United States, has no process of voir dire. Faith in the common man is inherent to faith in the

jury, and this faith resonates with Dickens's literary vision of randomness—his reliance on a multitude of minor characters given a voice and placed in position of power.

Dickens's promotion of a common juror to membership on a special jury engages issues of class, for to serve on a special jury a rank of merchant, banker or esquire was typically required. In this way, we begin to see how Dickens's representations of the jury are an important part of understanding his social vision. The social vision in Dickens's early fiction was considered by Victorian critics to be less coherent than in later social novels. For example, while *Sketches by Boz* (1836) includes the serious "A Visit to Newgate," *The Examiner* reviewer found "the fault of the book to be the caricature of Cockneyism" (qtd. in Chittick 61). In a similar manner to "A Visit to Newgate," Dickens's depiction of Pickwick's stay at Fleet prison exposes the grim conditions for the poor in the penitentiary. Beyond the conditions in prison, Dickens's questioning of class distinction as arbitrary aligns with the sympathy for the common juror demonstrated throughout his fictional legal narratives. In *The Pickwick Papers*, Dickens narrates the tale of the common juryman, a chemist, who tells the judge "there'll be murder before this trial's over" (401). The chemist says this is due to the fact that he cannot afford to employ an assistant, and only an errand-boy is left in his shop, who believes "Epsom salts means oxalic acid; and syrup of senna, laudanum" (402). This episode directly engages with the debate over whether jurors ought to be compensated for serving on juries, and as demonstrated in the newspaper accounts of Chapter 1, was part of the outcry over unjust conditions for the actual jurors in this "sacred" institution of the jury. The judge in Pickwick's trial does not sympathize with the chemist's plight, but rather argues that the

chemist should be able to afford a competent assistant. If many of the treatises on the future of the jury in the Victorian period were authored by barristers in positions of privilege like Dickens's fictional judge, then Dickens's narrative of the jury offers the layman's view to the nineteenth-century reading public.

To return to the issue of juries as a "finder of fact," Pickwick's trial engages the issue of whether juries decide questions of fact based on fact or feeling. Sergeant Buzfuz, attorney to Mrs. Bardell, uses legal rhetoric to appeal to the better natures of the jurymen—he calls the panel a group of "high-minded and intelligent" men, which prompts the jurymen to take "voluminous notes with the utmost eagerness" (403). The issue of note taking by the jury was also a highly contentious one, because without notes, the jury allows the facts of the case to wash over them, and is more likely to make decisions based on instinctual feelings. Historically, juries did not take notes. If this custom emerged from a lack of education among the jury, then in the nineteenth century, Victorians, in the tradition of empiricism, explored ways to remove uncertainty from the jury's deliberations. For example, in *The Juryman's Guide* (1845), Stephen suggests that jurors ought to write down the facts and never be satisfied without hearing every word from a witness's mouth: "even a slight difference of emphasis may attach a very different meaning to the same words; nor is it infrequently the case that the witness himself, when he observes the attention with which his evidence is received by the jury, is recalled to accuracy and precision" (58). Stephen not only educates the jurors on the importance of obtaining an accurate representation of the facts but also charges the jurors with a responsibility for producing this precision in the witnesses. In this way, scrutinizing the

jury's method for arriving at a verdict reflects the Victorian societal anxiety over uncertainty and the unexplained, with note-taking as a means through which to combat the ambiguity the jury's position as a "black box" engenders.

The Pickwick Papers uses humor to confront societal anxiety over the competency of the jury to properly fulfill its appointed role. In analyzing a note from Pickwick to Mrs. Bardell concerning a slow coach, Buzfuz makes a joke to the jury about Pickwick being a "criminally slow coach" whose speed will be "greased" by the jury (406). Only the greengrocer smiles at Buzfuz's joke, thereby raising the question of whether the attorney has the jury's attention. Unable to assess the jury's attentiveness, and by implication its competence, Buzfuz narrates it to the courtroom, appealing to "an enlightened, a high-minded, a right-feeling, a conscientious, a dispassionate, a sympathizing, a contemplative jury of her civilized countrymen" (407). When the jury retires to its private room to deliberate, the joke about hunger is reprised, as the judge also retires to his chambers, "to refresh himself with a mutton chop and a glass of sherry" (417). The placement of this reference to the joke suggests that the withholding of food and drink has something to do with the return of the jury's verdict in fifteen minutes. Quick verdicts likely produced anxiety in the Victorian public, for the assumption is that it should take time to reach unanimity among twelve people engaging in independent thought. Through the use of humor, Dickens hints at the ridiculousness of placing twelve men in a room without food, drink or stipend, and expecting a long thoughtful deliberation. In this way, the Pickwick trial anticipates what the legal treatises in the next

decade would argue. For example, *The Juryman's Guide* states the requirement of the consensus of twelve men to be "the very climax of absurdity*"* (G. Stephen 66).

The jury only deliberated for fifteen minutes, returning a verdict for the plaintiff with damages at seven hundred and fifty pounds. The silence of the jury upon reaching a verdict is amplified by Dickens's narrative style. Known for his "fondness for superfluous detail," "playful digression" and "flights of metaphorical fancy" (Dickens's Style 11), Dickens's narration at the issuance of the verdict against *Pickwick* is a departure from his narrative style:

> The jury then retired to their private room to talk the matter over, and the judge retired to his private room, to refresh himself with a mutton chop and a glass of sherry. An anxious quarter of a hour elapsed; the jury came back; the judge was fetched in. Mr. Pickwick put on his spectacles, and gazed at the foreman with an agitated countenance and a quickly-beating heart.
>
> 'Gentlemen,' said the individual in black, 'are you all agreed upon your verdict?'
>
> 'We are,' replied the foreman.
>
> 'Do you find for the plaintiff, gentlemen, or for the defendant?'
>
> 'For the plaintiff.'
>
> 'With what damages, gentlemen?'
>
> 'Seven hundred and fifty pounds.'

> Mr. Pickwick took off his spectacles, carefully wiped the glasses, folded them into their case, and put them in his pocket; then, having drawn on his gloves with great nicety, and stared at the foreman all the while, he mechanically followed Mr. Perker and the blue bag out of court. (412)

The characters in this scene are abstracted; the judge becomes "the individual in black." After a detailed report of the judge's charge to the jury, the narrative silence from the jury is more pronounced. Dickens uses a tonal shift to demonstrate the difference between the spectacle of the lawyers and the silence of the jury. If Dickens frustrates the reader's attempts to visualize the jury as individual minor characters at the moment of the verdict, then in the moments after the verdict there is an emphasis on sight that brings out this lack of vision. Through Pickwick's act of staring at the foreman, Dickens uses the descriptive strategy of emphasizing sight to illuminate the cultural anxiety over the unknown authority of the jury. The act of staring is empirical in its reliance on the senses, and in this way, exists in opposition to the non-empirical processes of the jury. Victorians wanted to gain information through the senses, through a faith in the empirical processes of observation. To the extent the deliberations of the jury violated these rules, its place in modern society was under scrutiny.

The trial scene in *The Pickwick Papers* not only properly recounts legal procedure but also captures and broadcasts popular sentiments about the jury that grounded the debate over its future in the British justice system. Dickens's depiction of the trial in *Pickwick* raises questions related to modernity, in the anxieties over the competency of the jury, and the influence of a lawyer's rhetoric on the jury. This reading goes against

the critical tradition regarding Dickens's modernity. According to Juliet John, "critical emphasis on Dickens's modernity has tended to marginalize earlier texts like *A Christmas Carol*, *The Pickwick Papers* and *The Old Curiosity Shop*, in which idealism and sentimentality occlude anxieties about alienation and change"(8). If these texts are read as "Happy Dickens," the later social novels are the darker, conflicted, even radical Dickens. Using a law and literature methodology makes it difficult to draw a clear distinction between cheery Dickens and modern Dickens. In *The Pickwick Papers*, Dickens demonstrates ambivalence in his depiction of the jury—the jury is simultaneously represented as a body of citizens to feel sympathy for and a body of citizens to ridicule. In the decade following the publication of *The Pickwick Papers*, several biographical and historical factors help us understand the shift in Dickens's representation of the jury to a positive one.

THE "ATTENTIVE JURYMAN": DICKENS'S EVOLVING RELATIONSHIP TO THE JURY AND REPRESENTATIONS OF THE JURY IN *A TALE OF TWO CITIES*

The lightness in Dickens's humorous approach towards the jury in *The Pickwick Papers* evolves into an interest in what the "attentive juryman" can accomplish in his later novels. Many critics place Dickens's interest in writing legal narratives in his biography. For example, Sally Ledger, in analyzing Dickens's experiences with the law argues that "although he detested and pilloried the Law, he was also magnetically drawn to it" (78). At the age of fifteen, Dickens began an eighteen month apprenticeship in the office of Mr. Edward Blackmore, attorney-at-law in Gray's Inn. He also spent some time reading law at the Inns of Court and worked as a court reporter for the Court of Chancery.

In addition, Dickens's friends, such as the prominent lawyers Talfourd, Denman, Campbell and Hawkins are credited with broadening Dickens's understanding of the law (Fyfe 32).

Dickens not only witnessed many trials and public executions but also was a plaintiff in a copyright suit over the printing of his own works. Dickens's legal battle was over the pirated version of *A Christmas Carol* entitled "A Christmas Ghost Story Re-originated from the original by Charles Dickens Esquire and analytically condensed expressly for this work" published on January 6 1844 in *Parley's Illuminated Library*. This publication had previously boasted reworded abridgements of *The Old Curiosity Shop* and *Barnaby Rudge*, but *A Christmas Carol* proved the last straw, as suggested by Dickens's angry response:

> I have not the least doubt that if these Vagabonds [the publishers] can be stopped, they must be. So let us go to work in such terrible earnest that everything must tumble down before it...get an *immediate* opinion from some man, learned in Injunction matters...if he be a man who has a taste for Literature besides, so much the better...If we could have a conversation with the Counsel, it would be well that I, who know the original book, should be present. (qtd. in Hancher 813)

Not only is Dickens seeking an immediate injunction, he also frames the proceedings with some attention toward the aesthetic value of literature. Dickens wants to be present to defend his work as the artist and he desires an attorney with an appreciation for

literature. Dickens's request echoes Talfourd's speech before Parliament advocating for a better tribunal to hear literary copyright infringement claims "than judges who have passed their lives in the laborious study of the law, or jurors who are surrounded with the cares of business, and, except by accident, little acquainted with the subjects presented to them for decision" (15). In fact, Dickens obtained legal representation from his friend Talfourd and won an injunction in this lawsuit; however, he was unable to recover his costs from the infringers and ended up paying for the litigation out of his own pocket (Fyfe 22).

These legal experiences may explain Dickens's relationship with the law, but for the purposes of my argument, Dickens's writings about his experience serving on a jury are most relevant. "Some Recollections of Mortality," Dickens's essay that includes, among other things, his experience of serving on a coroner's jury, appeared in *All the Year Round* in 1863 and was reprinted in the second series of *The Uncommercial Traveller* (1868). In this essay, Dickens writes that in 1839, soon after leasing a "frightfully first-class Family Mansion, involving awful responsibilities – I became the prey of a Beadle," being summoned to serve on a coroner's jury (196). The case involved the question of whether a young mother had concealed the birth of her now deceased child or had actually killed the child. In "Some Recollections of Mortality," Dickens prides himself on asking questions of the witnesses during the inquest, and applauds the coroner for supporting his inquisitiveness. The jury found the mother only guilty of the minor offense of concealing the birth, rather than infanticide. In his account

of his service as a juror, Dickens does not describe the other members of the jury; rather, he describes sitting together "in a sort of boardroom, on such very large, square, horse-hair chairs that I wondered what race of Patagonians they were made for" (197). In his biography, the coroner had only good things to say about Dickens as a juror: "But Dickens as a judge of how the official should behave to the poor, and of how a popular court should be conducted, is ideally situated; and the man whom he has commended in such relations need not fear the judgment of posterity" (Carlton 68). Dickens was so moved by the young mother's case that he retained counsel for her defense, with whose representation she received a lenient sentence. Dickens's personal narrative demonstrates the potential influence of the jury and his investment in his civic duty.

Although Dickens does not publish a non-fiction piece about his experiences serving on the jury in 1839 until 1863, there is a scene in *Bleak House* that recalls his own experience serving on the coroner's jury. The coroner's investigation of the death of Nemo includes "the feeble-minded beadle [who] comes flitting about Chancery Lane with his summonses, in which every juror's name is wrongly spelt" (159). In *Bleak House*, "an attentive juryman" questions the coroner's decision to block Jo's evidence from the investigation of Nemo's death (162). The "attentive juryman" echoes the role Dickens held on the coroner's jury; yet, perhaps lacking Dickens's influence, the attentive juryman's concerns ultimately have no effect on the jury's verdict. Jo's testimony is blocked, and with it, the coroner's jury rules Nemo's death accidental and goes to "hang about the Sol's Arms colloquially" (164). Dickens emphasizes the frivolity

of the jury's pursuits, despite the gravity of their duty: "half-a-dozen are caught up in a cloud of pipe-smoke that pervades the parlour of the Sol's Arms; two stroll to Hampstead; and four engage to go half-price to the play at night, and top up with oysters" (164). In representing the collective energy of the jury in this manner, Dickens seems to leave open the potential for change a panel full of "attentive" jurymen could have if persuaded to not take their civic duty lightly.

Consistent with the idea that the jury's potential as an institution could be fully realized if only juries could be empanelled with "attentive" jurymen, the characters that disparage juries are not the heroes in Dickens's writings. For example, the narrator in Dickens's "To be Taken with a Grain of Salt" denigrates the jury. This ghost story, appearing in *All The Year Round* at Christmas 1865, is told from the perspective of a juror at a murder trial. Upon receiving the jury summons for the Criminal Court at the Old Bailey, the narrator's manservant is surprised as he believed "that class of Jurors were customarily chosen on a lower qualification" than the narrator's, who is the head of a Department at a Bank branch (115). Before being called to jury duty, the banker sees a phantom in his bedroom, who turns out to be the murder victim. When all of the jurymen are sleeping together in one room, the banker again is visited by the murder victim, appearing as the thirteenth juryman. The narrator describes his fellow jurymen as "mischievous blockheads":

> Among our number was a vestryman - the densest idiot I have ever seen at large - who met the plainest evidence with the most preposterous

> objections, and who was sided with by two flabby parochial parasites; all the three empanelled from a district so delivered over to Fever that they ought to have been upon their own trial, for five hundred Murders. (115)

This portrait of the jurymen's incompetency might seem to negate my claims of Dickens's faith in the "attentive juryman," if not for the ambiguity surrounding Dickens's supernatural tale. The jury does not hear any evidence in this narrative; rather, the narrator's knowledge of the prisoner's guilt is based on his own visions of the phantom victim. As the title of the story suggests, the reader is not intended to be persuaded that the narrator is not a madman.

In another instance of the jury being disparaged by an unheroic character, in *Oliver Twist*, Fagin's associate Toby Crackit is the one who says he is "as flat as a juryman" (244). And Mr. Bumble, who also beats children, badmouths the jury:

> 'Juries,' said Mr. Bumble, grasping his cane tightly, as was his wont when working into a passion: 'juries is ineddicated, vulgar, grovelling wretch
>
> 'So they are,' said the undertaker.
>
> 'They haven't no more philosophy nor political economy about 'em than that,' said the beadle, snapping his fingers contemptuously.
>
> 'No more they have,' acquiesced the undertaker.
>
> 'I despise 'em,' said the beadle, growing very red in the face. (21)

Bumble's diatribe against the jury is occasioned by his recalling serving on a coroner's jury for a reduced tradesman, "who died in a doorway at midnight" (21). The jury found that the tradesman died from exposure to the cold and want of the common necessaries of

life. In addition, a special verdict suggesting that the relieving officer could have done more to save the man's life is discussed, which Bumble dismisses as "all the nonsense that ignorant juryman talk" (21). Again, Dickens alludes to the ideal of the "attentive juryman" that uses his civic duty to secure justice.

As in *Oliver Twist*, it is the anti-heroic characters who criticize the jury in *A Tale of Two Cities*; yet, in Dickens's novel of the French Revolution we find a comparative study of the jury in the English and French systems. It is in this comparative study that Dickens draws out the Englishness of the Old Bailey trial. As Catherine Hall argues, "it is the very assumptions about 'others' which define the nature of Englishness itself" (qtd. in Clemm 110). Additionally, the question of what an "attentive juryman" can achieve is examined through an exploration of the crowd, the potential jurors of England. Like the crowd, the jury is chosen at random and does not receive specialized training regarding how to perform jury service; therefore, the ways the crowd publicly weighs information to make decisions is revealing to what goes on in the black-box that is the deliberations of the jury. If the jury exists as a "finder of fact," then the question becomes how the jury arrives at its verdict. Like Trollope, Dickens narrates the cultural anxiety over this issue by representing the citizens making decisions based on both fact and feeling. Ultimately, the narrative silence at the verdict requires readers to enter their own narrative.

Appearing in *All the Year Round* in April through November of 1859, *A Tale of Two Cities* received little attention from critics at its publication. For example, *The Athenaeum* ran just a ten line review instead of its customary three or four columns (P.

Collins 433). Carlyle and Wilkie Collins were among the defenders of the novel, as well as Dickens himself, claiming "I hope it is the best story I have written" (433). According to Collins, the lukewarm response to *A Tale of Two Cities* may be attributed to the unpopularity of Dickens's previous works *Little Dorritt* and *Hard Times*. Collins also cites the experimental nature of the novel with its historical plot and lack of humor as contributing to its cool reception (433). *A Tale of Two Cities* continues to receive little critical treatment today relative to Dickens's other works that are popular in the classroom. What is especially surprising is that it is nearly ignored by law and literature scholars, despite the presence of its four trial scenes. An exception is an article by Simon Petch, who reads *A Tale of Two Cities* as a comparative analysis between French and English cultures of professionalism (36). In *Dickens and the Law*, Robert Coles notes that "we sometimes forget" Sydney Carton is a lawyer (575). Alexander Fyfe concurs, arguing that we forget Carton is a lawyer "because the interest which centers round him does not move on the legal plane" (Fyfe 77). The characterization in *A Tale of Two Cities* is unlike that of Dickens's other works, so we do not receive the detailed portraits of lawyers like we do of Jaggers or Tulkinghorn. Coles argues that "unlike *Bleak House* or *Great Expectations*, this novel does not directly approach the law as a profession." Indeed, Coles calls the law "a footnote" in *A Tale of Two Cities* (578). Coles's analysis betrays the tendency of lawyers to equate the law with the depiction of lawyers in fiction. Of course, beyond lawyers, the judges and the jury are essential parts of the legal system. Rather than a footnote, the trials in Dickens's historical novel warrant attention as a comparative study and demonstrate his position as a "finder of fact."

Dickens's negotiation of the dual aims of fact and imagination are reflected in the criticism on *A Tale of Two Cities*. From the novel's opening sentence, there is a tendency by readers to consider how juxtapositions will shape the narrative, but rather than grounding the reader historically, the first paragraph emphasizes imagination over reality. John Kucich notes that the opening catalog "comments more on the needs of the historical imagination . . . than on the actual tenor of any particular age" (qtd. in Griffiths 814). In fact, much critical work devotes attention to how Dickens's experimental historical novel lacks historical detail. Although the doubling of character and plot has been discussed extensively, less attention has been given to the way Dickens sets up a comparative history between the British and French legal systems. Devin Griffiths argues that "the historical imagination projected by *A Tale of Two Cities* was profoundly modern in its commitment to a new comparative history, a method of historical inquiry that replaced both the liberal progressive thesis of Whig history and the stadial histories of the Scottish Enlightenment with a mixed understanding of the differential and contingent forces of historical change, as demonstrated through comparison across historical periods and between national cultures" (813). My analysis considers how Dickens's comparative historical strategies highlight the differences between the English and French juries. According to Ledger, Dickens's comparative look at the Old Bailey trial and the French Revolutionary Tribunal reveal the inability of either system to secure justice (82). While I would agree Dickens highlights the flaws in both justice systems, his depiction of Darnay's acquittal at the Old Bailey encourages his readers to place their

confidence in the British institution of the jury, especially in comparison with the French system.

The reader experiences the first and only British trial in *A Tale of Two Cities*, of Charles Darnay for treason, through the perspective of the grave robber Mr. Cruncher. As illuminated by the trial scene in *The Pickwick Papers*, if a member of the jury does not appear, the court can require bystanders to hear the case in the absent jurors' place as tales-men. As a member of the crowd, Cruncher is part of the imagined jury and an "attentive juryman"; yet, Cruncher would not meet the property or income requirements necessary to qualify as a tales man. In this manner, Dickens as "finder of fact" balances legal realism and legal imagination; his fiction calls us to imagine a more democratic standard for jury qualification. Embodying the ideals of an "attentive juryman," Cruncher asks an unidentified man in the crowd at the Old Bailey about the treason case at hand. The man explains "the sentence" in all its gruesome detail, at which point Cruncher questions whether this is "the sentence" since the prisoner has not yet stood trial. Through the eyes of Mr. Cruncher, Dickens argues that society does not need to fear decisions being made by jurors based on feeling rather than fact. Dickens gives Cruncher's opinion on the state of the law's credibility through an exchange between Cruncher and an ancient law clerk over the merits of quartering those found guilty of treason (58). Cruncher's instinct is that quartering is "barbarous"; the clerk responds by stating the fact—that "it is the law." Cruncher's reliance on feeling embodies a stronger sense of justice than the empirical thought of the law clerk.

In addition to examining the tension between empirical and non-empirical modes of understanding, Dickens also distinguishes between the emotional force of a crowd and the feelings of an individual. If the "attentive juryman" can save the institution of the jury, then the collective jury is what is jeopardizing its future. For example, unanimity requirements result in a lack of individual decision-making and weighing of evidence. Dickens cautions against the dangers of the crowd mentality in *A Tale of Two Cities*:

> The sort of interest with which this man was stared and breathed at, was not a sort that elevated humanity. Had he stood in peril of a less horrible sentence—had there been a chance of any one of its savage details being spared—by just so much would he have lost in his fascination…Whatever gloss the various spectators put upon the interest, according to their several arts and powers of self-deceit, the interest was, at the root of it, Ogreish. (69)

The crowd of spectators is also represented as animalistic: "a buzz arose in the court as if a cloud of great blue-flies were swarming about the prisoner, in anticipation of what he was soon to become" (70). Indeed, Dickens suggests that there is something contagious about being a spectator at a trial. For example, Miss Manette's anxiety while giving testimony at Darnay's trial is reflected in faces of the spectators in the courtroom:

> Any strongly marked expression of face on the part of a chief actor in a scene of great interest to whom many eyes are directed, will be unconsciously imitated by the spectators…Among the lookers-on there was the same expression in all quarters of the court; insomuch, that a great

> majority of the foreheads there, might have been mirrors reflecting the witness. (72)

Dickens's concern for the moral welfare of the citizenry, as an "ogreish" interest in Darnay's trial clouds judgment and good reason, directly impacts our understanding of the imagined jury. This view is supported by Patrick Brantlinger who views the "rhetoric of toxicity" in Dickens as part of the cultural conversation over the ways in which criminal mentality gets spread (qtd. in Schramm 286). As Brantlinger suggests, through *The Pickwick Papers* Dickens emerged as "the superstar of the Victorian novel-reading public" (13). With this reading public came responsibility for the authors of fictional legal narratives, which converged over the debate of whether crime fiction deterred or encouraged criminal behavior. The confession of the valet in the *Courvoisier* trial that reading *Jack Sheppard* (1839-40) had inspired him to slash his master's throat provided some support for those who argued that crime fiction negatively affected public behavior (Brantlinger 72). Dickens famously defended himself in the 1841 preface to *Oliver Twist*, arguing that depicting thieves "in all their deformity, in all their wretchedness, in all the squalid poverty of their lives…would be a service to society" (qtd. in Brantlinger 75). Brantlinger is skeptical of Dickens's defense, explaining that representations of crime always run the risk of being misunderstood. The debate over the ethics of representing crime in fiction translates to the ethics of representing the jury. There is a danger to questioning the abilities of the jury to make just decisions and I would argue that Dickens's increasingly positive representations of the jury from *The Pickwick Papers* to *A Tale of Two Cities* reflect an awareness of this risk.

As in *Oliver Twist*, the denigration of the jury as an institution in *A Tale of Two Cities* comes from characters that Dickens portrays in a negative light. For example, the prosecution of Darnay begins with the image that "Mr. Attorney-General rose to spin the rope, grind the axe, and hammer the nails into the scaffold" (64). The Attorney-General addresses the jury through a shaming process:

> That, Virtue, as had been observed by the poets (in many passages which he well knew the jury would have, word for word, at the tips of their tongues; whereat the jury's countenances displayed a guilty consciousness that they knew nothing about the passages), was in a manner contagious; more especially the bright virtue known as patriotism, or love of country. (65)

The Attorney-General cites patriotism in the same breath that he shows scorn for his fellow Englishmen. In *A Tale of Two Cities*, patriotism as a motive for civic virtue is tainted, as both of the witnesses against Darnay have checkered records of debt, theft, and violence yet consider themselves "true Britons." Even so, the Attorney-General's rhetorical strategy of belittling the jury's education engages with the debates over the necessary education of a juror discussed in Chapter 1. Dickens approaches the question of the measure of "judicial wisdom" expected for a common law juror through the Attorney-General's address: "That, for these reasons, the jury, being a loyal jury (as he knew they were), and being a responsible jury (as *they* knew they were), must positively find the prisoner Guilty, and make an end of him, whether they liked it or not" (66). The parenthetical statements emphasize the presence of a faceless, voiceless jury that the

narrator refers to as "they." The jury only has an identity as a collective, since only the final verdict matters and the opinions of each of its constituent members are irrelevant. Dickens demonstrates the conflict between the jury as a revered institution, relevant to the question of what it means to be British, and the way the jury serves as an object of ridicule. It is not surprising that other than the Attorney-General, the character that disparages Darnay's British jury is Sydney Carton. Even Mr. Cruncher remarks on Carton's incompetency as a lawyer at this early juncture in the novel: "I'd hold half a guinea that *he* don't get no law-work to do. Don't look like the sort of one to get any, do he?" (76) Upon visiting Darnay after the trial, "the old seesaw Sydney" calls the jury "numskulls" (82).

Despite this questioning by Carton and the Attorney-General of the jury's competence, the British jury as depicted in *A Tale of Two Cities* is a model one in several ways. First, the jury was not unanimous and wished to retire to discuss the verdict. In Chapter 1, I addressed the debate over the unanimity requirement for jurors, as critics argued the pressures of reaching a consensus produced unjust, ill-considered verdicts. If in *The Pickwick Papers* the jury's return of a verdict in fifteen minutes suggests a hurry to get to dinner, in *A Tale of Two Cities* Dickens imagines an engaged jury. Another way in which Dickens's narrative shows the jury in a positive light is through the judge's reaction to the jury's decision to deliberate: "[the judge] showed some surprise that they were not agreed, but signified his pleasure that they should retire under watch and ward, and retired himself" (76). In this way, Dickens depicts the jury as acting independently of the judge's influence. This is significant because Victorian opponents of trial by jury

argued that juries should be abolished because the jurors did not actually decide anything, but rather, followed whatever the judge instructed them to decide anyway. The English jury's decision to deliberate in *A Tale of Two Cities* provokes a reaction from the crowd: "it began to be rumoured that the jury would be out a long while. The spectators dropped off to get refreshment" (76). In *The Pickwick Papers*, Perker warns Pickwick about the dangers of a hungry jury and the issue reemerges here in 1859, when the crowd fuels its rage with "mutton pies and ale" while the jury decides the fate of a man without refreshment. Darnay's jury returns after ninety minutes, suggesting that some discussion between jurors took place rather than a quick unconsidered verdict. The duration of the jury's deliberations is short compared to some highly publicized cases in nineteenth-century Britain, but an improvement over the fifteen minute deliberation during Pickwick's trial.

Dickens's narrative calls readers to ask how do we separate the "orgreish" crowd from the jury of twelve men we entrust to achieve justice? In England, the jury is not part of the "buzz" of "great blue-flies" but rather exists independently as a decision-making body. Dickens's narrative strategy reflects the rhetorical imbalance of the trial; in *A Tale of Two Cities* the reader is privy to all of the lawyers' argumentation and none of the jury's deliberations other than a hastily written note with the word "AQUITTED" (78). Cruncher is unable to get back into the courtroom, so the jury verdict itself is not part of Dickens's narration. This narrative silence distinguishes what happens in the crowd from what happens in the jury room. Throughout the courtroom scene, the reader shares the perspective of a spectator; however, at the reading of the verdict the reader is not a

spectator. In so far as this narrative technique distances the reader from the crowd, it offers a moral education.

Critics are divided on the trajectory of Dickens's social vision. Some argue that he became more conservative by the time of his writing of *A Tale of Two Cities* while others find his later work to embody the radical Dickens. My evidence of Dickens's representations of the jury aligns with readings that his social vision deepened over time, as suggested by the shift from ambivalence in *The Pickwick Papers* to a positive representation in *A Tale of Two Cities*. The English jury's acquittal of Darnay on the charges of treason serve as a model, suggesting Dickens's optimism for future English juries to issue just verdicts. Hilary Schor argues that *A Tale of Two Cities* cannot be imagined to have "the immediate reformist impulses" of Dickens's other social novels of the 1850s—*Bleak House*, *Hard Times* (1854) and *Little Dorrit* (1855) (71). In contrast to Schor, Ledger clarifies how *A Tale of Two Cities* fits into Dickens's mid-century social agenda, arguing that Darnay's acquittal in his treason trial in England "is Dickens to a certain extent superimposing his mid-century reformist vision of the legal process onto a harsher eighteenth-century legal regime that he would like to purge" (90). I agree that Darnay's acquittal is more than a plot necessity; Dickens's novel builds confidence in the jury's ability to reach a just verdict at a point in history where public perception of the competence of the jury was low. Dickens's representations of the jury engage questions of class and education, as well as the tensions between fact and feeling, while maintaining faith in the ideal of the "attentive juryman."

Despite the crowd's "ogreish" nature, the English jury exists independently of the both the judge and the crowd as evidenced by its acquittal of Darnay, whereas the Revolutionary Tribunal represents the absence of a separate and independent decision-making body of jurors. Darnay's second trial in France differs in many ways from the British trial. While the absence of lawyers at the Revolutionary Tribunal may be the most obvious difference between the two proceedings, the interplay between the jury and the crowd is the more interesting point of distinction. During the testimony accusing Darnay of being an emigrant, "the Jury and the populace became one" (297). Dickens notes that "at every vote (the Jurymen voted aloud and individually), the populace set up a shout of applause" (297). The sanctity of the British institution of the jury is based in the privacy of its operation; no one is privy to the jury's deliberations. In this manner, *A Tale of Two Cities* can be read as a tribute to the preservation of the independence of the British jury. This lack of distinction between the jury and the mob becomes more apparent during the third trial after Darnay is reaccused:

> Every eye was turned to the jury. The same determined patriots and good republicans as yesterday and the day before, and to-morrow and the day after. Eager and prominent among them, one man with a craving face, and his fingers perpetually hovering about his lips, whose appearance gave great satisfaction to the spectators. A life-thirsting, cannibal-looking, bloody-minded juryman, the Jacques Three of St. Antoine. The whole jury, as a jury of dogs empanelled to try the deer. (329)

It is significant that a French juror is actually identified by name, whereas the members of the British jury remain faceless, unknown and anonymous. Along these lines, Madame DeFarge tells of how she investigates Dr. Mannete's cell with a fellow-citizen who is a member of the jury. Dickens also describes the mannerisms of a juryman, "the craving man on the jury rubbed his hands together, and restored the usual hand to his mouth," (330) which emphasizes his presence as an individual character in the novel, not his part in an official, unbiased panel. To return to my argument about minor characters, the imaginative space that the members of the French jury occupy in *A Tale of Two Cities* emphasizes the lack of space for Dickens's readers. Here, Dickens emphasizes that before "that unjust Tribunal, there was little or no order of procedure, ensuring to any accused person any reasonable hearing" (329). In this comparative history, Dickens depicts England as having some procedural safeguards to ensure fairness in its trial process so that trial by jury did not devolve to an animalistic hunt for blood. The fickleness of the French crowd, inseparable from the jury, drives a dangerous tide toward violence: "At every juryman's vote, there was a roar. Another and another. Roar and roar" (333). One popular reading of *A Tale of Two Cities* is as a cautionary tale against what could happen if the corrupt legal system of mid-nineteenth century England did not undergo reform; yet, I would also suggest that the novel presents a narration against proposed reforms to abolish the use of the jury. The British crowd at the Old Bailey might be dangerous and in need of a moral education; however, Dickens's vision for an ideal jury is one that makes decisions independently of the crowd and the judge.

DICKENS AS FINDER OF FACT AND THE AFTERLIFE OF DICKENS' FICTIONAL LEGAL NARRATIVES

The simultaneous influences of feeling and fact in the jury's role as "finder of fact" are mirrored in a Victorian novelist's position as "finder of fact" in the novel. In chapters 2 and 3, I discussed how Trollope's role as "finder of fact" compelled him to strike a balance between his goals of legal realism ("fact") and his literary vision ("feeling or imagination"). In writing fictional legal narratives, Dickens negotiates a similar balance between fact and feeling. As in Trollope, Dickens's attempts at legal realism invite attacks from practicing lawyers concerning inaccuracies on points of law and legal procedure. The legal historian and attorney James Fitzjames Stephen, criticizes Dickens for his irresponsible use of law in his novels:

> A popular novelist may produce more disaffection and discontent than a whole army of pamphleteers and public orators, because he wears the cap and bells, and laughs in your face when you contradict him. A novelist has no responsibility. He can always discover his own meaning. To the world at large, Jarndyce v. Jarndyce represents the Court of Chancery. To anyone who taxes the writer with unfairness, it is merely, he is told, a playful exaggeration. ("Mr Dickens as a Politician" 359)

What angers Stephen about the way in which Dickens can produce a legally realistic depiction of Chancery while at the same time being at liberty to exercise his imagination is that "the world at large" does not know the difference.

Stephen also wrote a “celebrated trashing” of *A Tale of Two Cities* (Petch 40). Stephen argues that Darnay’s trial for treason is modeled on the trial of a French spy called De la Motte. Appearing in the *State Trials* in 1780, De la Motte’s trial also included a principal witness who was of bad character. What infuriates Stephen is that “it would be perfectly impossible to imagine a fairer trial than De la Motte’s, or stronger evidence than that on which he was convicted”(45). According to Stephen, all of the melodramatic elements the reader finds in Darnay’s Old Bailey trial are disgraceful embellishments. It is difficult to discern why Stephen cannot afford Dickens any authorial discretion in his reimagining of the trial. Stephen condemns Dickens for his vagueness and lack of legal knowledge, while at the same time insisting that Dickens’s fictional legal case adheres closely to a *State Trials* transcript, indicating some degree of research by Dickens. Stephen argues that in Darnay’s English treason trial, Dickens “does his best to show how utterly corrupt and unfair everybody was who took part in the proceedings” (46). In his assessment of the players in the courtroom, Stephen makes no mention of the jury that Dickens depicts as securing justice for Darnay.

Stephen’s criticism was not the first occasion that Dickens's legal narratives had been attacked as irresponsible; he had already experienced similar criticism for an article in *Household Words* entitled "The Martyrs of Chancery" (1850). In this essay, Dickens depicts the fate of a Chancery prisoner as worse than a criminal convict, because the Chancery prisoner never knows when he will be released: "he may, and he frequently does, waste a lifetime in the walls of a gaol, whither he was sent in innocence; because,

perchance, he had the ill-luck to be one of the next of kin of some testator who made a will which no one could comprehend, or the heir of some intestate who made none" ("The Martyrs of Chancery" 2: 250). Dickens explains that if the party does not defend a Chancery suit or pay the costs he in thrown in gaol for "contempt" ("The Martyrs of Chancery" 2: 251). He goes on to profile several prisoners who have been held without review for decades; for example, one man appealed an order and waited seventeen years for the order to be heard and then reversed because of a mistake. According to Holdsworth, Sir Edward Sugden "had no difficulty in showing that particular abuse was then a thing of the past" (81).

Holdsworth references a letter to the *Times* in January 1851, in which Sugden explains that the prisoner held by mistake, to which Dickens referred, had been purged of his contempt fourteen years ago and his detention was related to a debt which had nothing to do with Chancery (Atlay 36). Sugden also assured Dickens that his own Act required that prisoners be visited at the gaol by a Master to learn of remedies and applications for release. In a published response, Dickens indicated that Sugden's procedure was not being carried out in practice. In this manner, Sugden accuses Dickens of creating "imaginary" martyrs, while Dickens counters by accusing Sugden of promoting a law which in practice was not implemented. That Dickens's work received a response from a high official like Sugden illustrates the potential the author had to shape Victorian law. Dickens resented Stephen’s line of attack and made efforts to broadcast his legal accuracy and adherence to fact. At the same time, Sugden's criticism of

Dickens's reliance on *ex parte* sob stories may have induced Dickens to ground his satire in *Bleak House* in authoritative fact.

In the Preface to the First Edition, Dickens asserts that "everything set forth in these pages concerning the Court of Chancery is substantially true, and within the truth" (5). He specifically cites the case of Gridley as one "made public by a disinterested person who was professionally acquainted with the whole of the monstrous wrong from beginning to end" (5). This reference is to William Challinor, author of the legal pamphlet *The Court of Chancery: Its Inherent Defects, By a Solicitor* (*Letters* 6: 623). In a letter to Challinor, dated March 11 1852, Dickens acknowledges the receipt of the lawyer's pamphlet (*Letters* 6: 623). If the estate in Jarndyce and Jarndyce is absorbed in costs causing the suit to "lapse and melt away," then Gridley's case sees a similar end: "my whole estate, left to me in that will of my father's, has gone in costs" (250). Gridley's case allows Dickens to revisit the issues he raised in "The Martyrs of Chancery." For example, Gridley explains that he has been "in prison for contempt of Court" (252). One could argue that using a case from a solicitor offered Dickens a layer of protection unavailable in "Martyrs of Chancery," for which he used stories related by prisoners. Challinor quotes John Forster's *The Life of Charles Dickens* in illustrating his pamphlet's impact on *Bleak House*: "Dickens was encouraged and strengthened in his design of assailing Chancery abuses and delays by receiving, a few days after the appearance of his first number, a striking pamphlet on the subject containing details so apposite that he took from them, without change in any material point, the memorable case related in his fifteenth chapter" (qtd. in Challinor 243).

In *Bleak House*, Dickens stays faithful to the "material points" of the attorney's case, including the three hundred pound legacy, the seventeen defendants (with one being left out) and the legal costs equal to three times the legacy. Where Dickens departs from Challinor's pamphlet is in the defendant's response to the situation. Challinor ends his description of the facts of the case with a discussion of legal procedure. The Plaintiff's solicitor lends Challinor a copy of the supplemental bill (which includes all of the prior proceedings before the discovery of the missing defendant) so he may file his client's answer; wherein, Challinor learns that his client must pay for an office copy of the bill before putting in his answer (206). By contrast, Dickens leads Gridley to "accuse the individual works of [Chancery]" for which he goes to prison for contempt of Court and threatening a solicitor (252). In this manner, Dickens uses Challinor's facts to generate his fiction and return to the issues that troubled him upon writing "The Martyrs of Chancery."

Early criticism on *Pickwick* and the law from attorneys tends to the extremes of either glowing praise or scathing condemnation, depending on the extent to which the author finds Dickens's representation of the law to be accurate. Lecturing on *Pickwick* and the law in 1893, Frank Lockwood, a barrister and Member of Parliament, describes turning to Dickens for a respite from the critics of the legal profession:

> Being reminded, as I was, that the subject of the law was unpopular, I turned—as I have often done in the hour of trouble—I turned to my Dickens, and there I found that at any rate in Dickens we have a great

> literary man who has been impartial in his treatment of lawyers. He has seen both the good and the bad in them. (12)

Lockwood presents a catalog of Dickens's lawyers in *Pickwick*, concluding that he is "grateful" for the "fair and impartial consideration" of his profession (12). Ultimately, Lockwood urges the public to be grateful for Dickens, whom he credits with ushering in legal reform.

By contrast, an attack alleging unforgiveable legal inaccuracy appears in 1890 in *The Cornhill Magazine*, wherein the author attempts to clear the names of Dodson and Fogg, Bardell's attorneys in *The Pickwick Papers*. The anonymous author appears to be an attorney or otherwise associated with the legal profession, as the article discusses the ways in which "critics complain that quality of our mercy is strained" when taking on clients in Mrs. Bardell's position ("In The Matter of Dodson and Fogg, Gentlemen," 149). The author goes through every claim in Mr. Pickwick's case and finds the novel's indictment of Dodson and Fogg to rest on a "medley of inconclusive facts and unsupported assertions" (152). The author reads the case against Dodson and Fogg as serious and acts as though a defense of the lawyers is necessary: "It says little for his readers' sagacity that he should have obtained so general a concurrence in his views; it says as little for their chivalry that no one has attempted a defense of the men he assailed" (152). Indeed, the early criticism of Dickens by lawyers seems to be generated from strong, personal emotions arising from anxieties stemming from the debate over the

ethics of legal advocacy. As discussed in Chapter 3, one can connect these anxieties to the concurrent rise in the professionalization of the legal field.

Beyond criticism by Victorian commentators, I am interested in analyzing the afterlife of Dickens in the legal community during the twentieth and twenty-first centuries. The ways in which lawyers read Dickens over time shed light on the rhetoric of law and literature. Law Professor Jane Baron provides a definition for the rhetoric of law and literature:

> The large claims about literature's importance for law have a structure: "unlike law," the arguments go, "literature does this or that (humanizes, sensitizes, etc.)" or, reversed, "like literature, law has this or that attribute (textuality, conventions, etc.) In asserting likenesses and unlikenesses, these formulations assume and rhetorically construct a separation of domains, a separation that I see as problematic and under-analyzed. (2275)

Applying Baron's theory to the scholarship of Dickens and the law, I would argue a starting point for disciplinary blindness comes when literature scholars try to answer the question of why Dickens wrote fictional legal narratives. Literary critics tend to explain Dickens's interest in the law through biography, noting that he was involved in legal cases and rejected the law as a profession. Yet, focusing on Dickens's involvement and subsequent rejection of the legal profession appears to be a superficial analysis caused by disciplinary blindness—it is as if the critic is saying Dickens found the law to be dry and

literature to be human. Framing Dickens's interest in this way only feeds into modern stereotypes about the law's soullessness and does not explain his fascination with the intricacies of legal procedure.

Criticism by lawyers writing in the early to mid twentieth century on Dickens runs the gamut with respect to the commentators' opinions of the accuracy and quality of Dickens's depiction of the law and lawyers. John Marshall Gest, in an address to law students at the University of Pennsylvania in 1905 informs them "Now, you may learn a great deal of law in a very agreeable way by reading novels" (402). He instructs law students to not only read *Bardell v. Pickwick* but also the trials in *A Tale of Two Cities*, the trials of the Artful Dodger and of Fagin in *Oliver Twist*, Kit's trial at the Old Bailey in the *Old Curiosity Shop*, and the death sentence of Magwitch in *Great Expectations* (Gest 426). Gest is one of many legal scholars who catalogs the legal professionals in Dickens, identifying each and every barrister, solicitor and law clerk. This technique of presenting an exhaustive catalog of all of the legal characters not only arouses strong emotions in the commentator but also leaves the commentator with a strong impression of Dickens's overarching feelings towards lawyers. For example, Robert Donald Neely, upon cataloging Dickens's lawyers, sees Dickens's condemning of the legal profession: "his contact with the legal profession and the courts evidently engendered in him an intense hatred for the whole bar—few of his lawyers are any credit to the profession" (10).

Thomas Alexander Fyfe, in *Charles Dickens and the Law* (1910) views the relationship between the fictional legal narrative and the lawyer as providing

entertainment to the public: "It has often struck me that some young lawyer with time on his hands might do his profession a service, and amuse the public, by compiling a volume of extracts from popular novels setting forth the law as expressed in the novels, and in a parallel column the law as it really is" (17). Fyfe may not see potential for legal instruction in Dickens's narratives; yet, he does believe in the author's legal accuracy—"He never lays down bad law, and he never credits a member of the legal profession with impossible professional conduct" (21). Fyfe suggests that *Bleak House's* appeal to lawyers is from the subtlety of the legal humor, which is "often missed by the lay readers, who more readily understands the lawyers of the *Pickwick Papers*" (27).

The attorney Theobald Mathew, writing in 1918 speaks of *The Pickwick Papers* as "faithfully recorded fragments of legal history" (323). In detailing the legal accuracy of *Pickwick*, Mathew notes that the novel's accuracy extends beyond the details of trial procedure such as Mr. Pickwick's remaining out of the witness-box because litigants in the superior Courts were not allowed to testify until 1851 (324). For example, Perker advises Pickwick that "we must have habeas-corpus;" in fact, since Pickwick was a defendant who had not satisfied the plaintiff, he was either to be placed in the sheriff's custody or removed by habeas corpus to the King's Bench or Fleet Prison (Mathew 327). Mathew goes so far to suggest that *The Pickwick Papers* function as a textbook for law students: "Has not the time come for an annotated edition of that masterpiece, to which the student-at-law may be referred by readers and lecturers for a reliable account of the practical working of the law of personal actions when Queen Victoria ascended the throne?" (328). In this way, he sees little distinction between Dickens's contributions to

the law and his son, Henry Fielding Dickens's work as a Common Sergeant. Lawyers writing on Dickens in the early twentieth-century want to mark Dickens as a proponent and perhaps honorary member of the Victorian Bar, placing him in the role of a humanizer of an already unpopular profession.

Fyfe's question of how Charles Dickens, as a non-lawyer, acquired information typically known only to lawyers and legal specialists is taken up by legal critics in the mid-twentieth century. For example, F.E. Vaughn expresses "astonishment over Dickens's extensive knowledge of court procedure," arguing that the "when and how" of Dickens's gaining such specialized legal knowledge is a mystery (595). Implicit in Vaughn's observation is the idea that specialized legal knowledge is too esoteric or sacred to be faked and that the only rational explanation is that Dickens had unrecorded training in the law. Similarly, Lord Chief Justice Hewart of Bury wondered at "the range and accuracy of knowledge which had somehow been acquired by this amazing young novelist of twenty-four years. How had he acquired it?" (Gould 78). Subsequent law review articles betray an anxiety over this possibility of a legal professional being fooled into reading Dickens's law as astonishingly accurate. For example, W.B. Gould emphasizes the "sketchiness" of Dickens's legal knowledge and labels the author "at best, only a layman-lawyer" (88).

Modern scholarship on Dickens by lawyers tends to follow similar patterns to the scholarship of the late nineteenth-century and early twentieth-century—lawyers either react with outrage over legal inaccuracies or astonishment at how well Dickens knew court procedure. Using a law and literature methodology allows us to see both responses

as important moves in disciplinary policing. First, it is necessary to review the theoretical framework that grounds the law and literature movement.

The law and literature movement emerged in the 1970s and different theories have been put forward to explain its emergence. Guyora Binder and Robert Weisberg suggest it was a methodology with which to counteract the law and economics movement (Peters 73). Amy Ronner suggests the law and literature movement was a humanist movement motivated by a desire to rehabilitate the elitist notion of a lawyer removed from the people (12). Julie Stone Peters argues that the study of law and literature grew out of a general interdisciplinary struggle, wherein the nature and value of traditional academic disciplines was under attack (71).

Critics agree that James Boyd White's *The Legal Imagination* marks the beginning of the law and literature movement. In it, White, a lawyer by training, examines the intersections between law and literature as a tool for determining "the possibilities of different forms of speech or expression: of the judicial opinion or the poem, for example, or of the narrative, in the law and out of it" (xii). White characterizes the law as an art and a branch of rhetoric; in practice, it is the art of making compositions of one's own using the special language of the law. For White, "the greatest power of the law lies not in the particular rules or decisions but in its language, in the coercive aspect of its rhetoric—in the way it structures sensibility and vision" (xiii). White's scholarship focuses on the ways in which lawyers and law students may benefit from literary study.

From this jumping-off point, the law and literature movement considers both law in literature, the analysis of legal themes in literature, and law as literature, which uses

literary techniques to interpret legal scholarship. Peters, a Professor of English, recognizes a thematic division in the discipline between the humanist, hermeneutic, and narrative strands of legal scholarship. Under this categorization, "law in literature" scholars such as White fall under the humanist tradition, arguing that literature shows the law how to be human. The hermeneutic branch is characterized by the belief that literary theory can be used to interpret law. As Peters suggests, law as literature scholars saw theories such as deconstruction and poststructuralism as a radical means with which to attack the traditional interpretative modes of the law (446). The third approach to law and literature is the narrative jurisprudence, or legal storytelling movement. In the broadest sense, legal storytelling is the use of narrative in the theory or practice of law. Narrative legal scholars believe that storytelling should be incorporated into several aspects of cases, including evidentiary hearings, witness statements, closing arguments, and judicial opinions. This chapter examines the rhetoric of the law in literature branch of the movement.

Law Professor Robin West characterizes the insights obtained by applying the perspective of the law in literature strain of the law and literature movement as follows:

> We should attend to the depictions of law we find in imaginative literature, for the simple reason that literature may contain truths about law that are not easily found in nonnarrative jurisprudence…Those insights are not, however, either obvious or uncontested, and their unearthing requires serious scholarship as well as pedagogy" (101).

What West calls the "obvious" nature of the truths lawyers are able to unearth from fictional legal narratives is also a concern of Peters, who writes about the reductive ideas each discipline holds of the other. Peters argues that interdisciplinarity emerges out of some "invisible pain…each discipline's secret interior wound: literature's wounded sense of its insignificance, its inability to achieve some ever-imagined but ever-receding praxis; law's guilty sense of its collaborationism, its tainted complicity with the state apparatus, its alienation for alienation itself" (78). According to Peters, law and literature look to each other to fill each other's inadequacies; yet, this very process creates distance by emphasizing each discipline's otherness. Peters argues that each discipline is looking for what is missing in itself. However, I would argue that in studying the rhetoric of law and literature criticism on *Bleak House,* each discipline seems protective of its own disciplinary interests and does not, as Peters contends, seek to complement the other. Legal scholars study *Bleak House* as an accurate reflection of legal history. The extent to which literary scholars downplay the degree to which fictional legal narratives are engaging deeply with the law suggests some anxiety over disciplinary boundaries. If Dickens's engagement with the law transcends satire then the critical conversation surrounding Dickens's work is something more than a literary debate and lawyers have valid contributions to add to the critical conversation.

A common trope in the criticism regarding Dickens and the law is that Dickens hated lawyers. Peter Ackroyd believes that Dickens "carried hatred enough for all forms of the law itself" (qtd. in Ledger 79). Unsurprisingly, the law professors who teach Dickens do not subscribe to this belief. Literature scholars tend to see a law versus

family dynamic in the double narrative of *Bleak House* whereas legal scholars focus on the humaneness of the lawyers. *Bleak House's* double narrative is especially interesting, for legal scholars rarely mention Esther in an article on *Bleak House*, whereas literature critics focus on her narrative. A major strain of law and literature scholarship has been motivated by the idea that literature can humanize the law anew. Professor Robert Weisberg of Stanford Law School refutes this inference that literature offers empathy and individualization as an alternative to the law's soulless genericism, labeling it a "distortive effect plaguing law and literature" (88). Nonetheless, Dickens remains popular in law schools—while many literary critics talk about his caricature of lawyers, broad satire, and general distaste for the law, lawyers look to Dickens for humanity.

According to Mariana De Marco Torgovnick, a professor of English, "Interdisciplinary study works because people from one discipline are not routinely bound by the same assumption as people from another. They do not necessarily share the same blind spots, focus on the same things, or think about problems in the same way…In other words, interdisciplinarity brings with it the benefits of defamiliarization" (Friedman 313). As Susan Stanford Friedman suggests, this relationship allows for "brilliant breakthroughs" in scholarship (313). However, I would argue that this "defamiliarization" can also cause tension between disciplines. In the field of law and literature, literature scholars lack the foundation in the law and its interpretation and application necessary to critique the law while legal scholars lack the experience to teach close reading.

The critical question is how *Bleak House* is taught in law schools when literary scholars caution against treating Dickens as a realistic mirror of the law. In an article appearing in *Teaching Law and Literature* (2011) published by the Modern Language Association of America, English Professor Kieran Dolin discusses his development of a law and literature approach to teaching *Bleak House* to both law students and literature students. Dolin begins with Richard Weisberg's characterization of the fields of law and literature "that both fields structure reality through language and both have more or less formalized practices of reading and writing" (289). Dolin's approach to teaching *Bleak House* is also informed by the methodology of Barbara Leckie's work tracing the impact of the cultural ideologies that bind both law and literature. In emphasizing Dickens's faith in literature as a tool for legal and political reform, Dolin does not mention the criticism of *Bleak House* for exaggerating the ills of Chancery to fulfill Dickens's satirical purpose. Rather, he notes that the ills of Chancery "were not exaggerated or fanciful" (291). Although Dolin's syllabus for the *Bleak House* and the law seminar includes legal documents such as court opinions, the impulse seems to be to read Dickens's portrayal of the law as accurate and worthy of study by both undergraduate English students and graduate law students.

In "*Bleak House* in Law School," an article in *Approaches to Teaching Dickens's Bleak House* (2008) Robert Googins, Professor of Law, discusses his Dickens and the law seminar for second and third year law students. Students are required to read *Bleak House* before the semester begins, suggesting that the course is more about considering

Dickens's text in the context of modern legal issues than close reading strategies. Indeed, the actions of Dickens's lawyers are considered to determine how they would be in violation of current standards of professional responsibility. This use of the text raises the question of what law and literature pedagogy is trying to achieve. If the literature is sidelined, then Googins's teaching *Bleak House* plays into the disciplinary fears Peters discusses of literature being inconsequential. In contrast to Dolin, Googins does identify setting a date for *Bleak House* as "an objective of the course," because of critical articles and Dickens's statement in the preface to the first edition. Here, Googins may be referring to Stephen's "The License of Modern Novelists" wherein Stephen attacks Dickens on the issue of Dickens's timeliness, noting that the "Court of Chancery was reformed before [Dickens] published *Bleak House*" (Stephen 349). In the Preface to the First Edition of *Bleak House*, Dickens asserts that "everything set forth in these pages concerning the Court of Chancery is substantially true, and within the truth" (5). Googins explains that one can accept Dickens statement if the novel is set around 1827 with Lord Lyndhurst as the model for the Lord High Chancellor, since the Chancery Commission Report of 1850 showed the ills of the 1820s to remain present despite subsequent reform. While it is true that by 1852, the consolidation of fees into a suitors' fund and the termination of sinecures had occurred, much within Chancery remained unchanged (Lobban "Reforming the Nineteenth-Century, 392).

Turning to Dickens's representation of lawyers, Law Professor Richard Weisberg devotes a chapter to Dickens's lawyers in his seminal study *Poethics*, where he claims

that "fiction about law continues to uncover better than any other medium the private lives of lawyers…and compels us to recognize that lawyers' private lives directly affect their public performances" (18). In addition to cataloging the lawyers, the legal critics identify patterns in the lawyers' behavior. For example, Ronald Boughman identifies several patterns in Dickens's lawyers – "physicality, public vs. private façade, accuracy of thoughts, feelings and facts, a degree of asexuality, and a connection with questions of life and death" (175). In a similar manner, Weisberg identifies fictional lawyers as either sympathetic and ineffective or professionally successful and possessing six characteristics: verbal manipulation, apartness, distrustfulness, professional ethical relativism, frugality, and passivity (57). The close reading strategies of Weisberg arise from a legal tradition, wherein fact patterns are compared against one another to find case law precedent. From an interdisciplinary perspective, the tendency to catalog and categorize the lawyers in Dickens seems to emerge from a need to harness literature's ambiguities.

When modern lawyers write about *Bleak House*, they, like earlier critics, tend to focus on the degree of accuracy with which Dickens represents legal procedure or Dickens's representations of the legal professionals—the solicitors Tulkinghorn, Vholes and Kenge and the law clerk Guppy. In the depiction of Tulkinghorn, Weisberg finds "one of those great moments in Law and Literature when the professional veil of the successful lawyer is about to be pierced" (70). According to Richard Weisberg, misogyny motivates Tulkinghorn's pursuit of Lady Dedlock's secret, which allows

Weisberg to posit that Dickens reveals to his readers that the law is far from objective and neutral and is rather controlled by personal prejudices and passions. While Weisberg reads Tulkinghorn's character and behavior as "an extreme of darkness, of monomania, of perversity," (73) several lawyers have written justifications for Tulkinghorn's actions. Stanley Tick finds in Dickens's depiction of Tulkinghorn an "enlightened ambivalence in the timeless debate between past and present values" (210). Michael K. McChrystal acknowledges Tulkinghorn's villainy, but questions whether his behavior violates ethical standards for American lawyers (393). Maureen E. Markey is troubled by law review articles defending Tulkinghorn's actions, arguing that "any such inclination is not only wrongheaded, it is also dangerous in that it only adds to the already tarnished image of the profession" (689). The rhetoric of Markey's argument helps to illuminate the challenges of a law and literature methodology. Ordinarily, when literary critics analyze the ambiguities of a fictional character, their work does not reflect on themselves as literary critics unless there is plagiarism, sloppy research, or the defense of truly unconscionable behavior. But Markey seems to be suggesting that there is a danger in law professors defending Tulkinghorn because it directly impacts the reputation of the profession. Markey does not specify the group whose estimation of lawyers would be changed by defending Tulkinghorn, and I have not found critical work from modern literary critics on Dickens decrying this law review scholarship. Indeed, the dearth of literary scholarship citing these law review articles suggests that modern literary scholars might not be the audience of legal critics writing on Dickens and the law.

A review of the law and literature criticism on Dickens exposes the challenges of practicing interdisciplinary scholarship. Modern literary critics caution against reading the law in literature as accurate, whereas modern legal critics are more likely to see the law in Dickens as a true portrayal of legal history. *Bardell v. Pickwick* does appear in a law textbook, *Taylor on Evidence*, as support for the hearsay rule. By cautioning readers against interpreting the law in Dickens as realistic, literary scholars not only shield Dickens from complaints of legal inaccuracy but also limit his relevancy outside of the field of literature. If literary critics do not treat Dickens's use of the law seriously, then legal frameworks are degraded in the law and literature conversation. Legal critics focus on the law in Dickens and its accuracies or ethical dilemmas without paying attention to literary technique or engaging in close reading. Mining a literary work for its treatment of the law often results in scholarship that misses the complexity of Dickens's literary vision. Despite these challenges, law and literature continues as an interdisciplinary movement, perhaps because, as Robert Weisberg suggests, the appeal of finding a united literary and legal discourse is "in the vision, often the dream, of a unified culture" (89). The ways in which Dickens's texts get read by lawyers through the centuries not only reveal the relationship between the literary and legal professions but also suggest modern applications for historical studies of lawyers' interpretations of literature.

Chapter Five

Ambiguous Verdicts and Juryless Trials: Collins's *The Law and the Lady* (1875), Braddon's *An Open Verdict* (1878), and Haggard's *Mr. Meeson's Will* (1888)

Representations of the jury in literature are significant as they raise a host of questions about democratic processes. Through treating these questions, Victorian authors create their own juryman's guidebook to educate their readers, the potential jurors of England. But jury scenes in literature have importance beyond the light they shed on social and political questions. Representations of the jury allow us to gain an understanding of not only an author's social vision but also an author's literary vision. This final chapter focuses on novels where the institution of the jury has failed to produce just results or the jury is altogether absent. In so far as Wilkie Collins, Mary Elizabeth Braddon, and Henry Rider Haggard write beyond the jury, literary strategies and solutions outside of the law resolve legal issues in their narratives. The ambiguous verdicts in *The Law and the Lady* and *An Open Verdict* create a level of uncertainty intolerable to Victorian society, while the inclusion of a juryless trial in *Mr. Meeson's Will* allows Haggard's vision of the trial to completely supplant that of the nineteenth-century Probate Court. These narrative strategies allow these texts to fit my broad definition of the law—the "law" of the jury includes legal treatises, the Victorian press, and fictional legal narratives. Collins's "law" on the Scotch verdict illustrates the dangers of proposed reforms to the English jury relaxing the unanimity requirement in

jury verdicts, while Braddon's "law" looks to empiricism to combat the ambiguity of communal processes. If Haggard's "law" imagines the possibility of a female jury, then, Haggard, along with Collins and Braddon, follow the critical tradition of sensation fiction questioning gendered identity.

Historically, sensation novels have been excluded from the narratives categorized as "Novels with a Purpose," those that possess the power to engage in social questions and challenge the status quo (Rodensky 4). Sensation novels, with their melodramatic plots, and primarily female audience, are categorized as popular fiction. But it is these texts' very popularity that makes them an ideal vehicle in which to address social questions pertaining to communal processes. Analysis of legal themes in literature is useful in identifying when authors are in dialogue with the shifting jurisprudential frameworks of their time. If correlations can be made between shifts in a legal definition and depictions of a law in a literary text, then the work may be read as reflecting and contributing to the socio-legal context. It has been argued that of all literary genres the sensation novel is most successful in addressing issues of Victorian law about women; indeed, much critical attention has been paid as to how sensation writers were shaped and influenced by the public conversation over the Parliamentary Debates leading up to the Divorce Act of 1857 (Houston 18). In addition, critics have considered definitions of criminal responsibility and the rules of evidence through an integrated literary and legal discourse. However, sensation novels remain understudied in relation to the law, especially the lesser read novels by well-known authors that I have chosen for this

chapter. Fictional legal narratives by Braddon, Collins and Haggard represent the cultural anxiety over the role of the jury in the Victorian period.

A VISION FOR REFORM IN COLLINS'S *THE LAW AND THE LADY*

In *The Law and the Lady* (1875), Collins uses a foreign justice system, in this case the Scotch system, to explore the relationship between national identity and English law; the aim of the heroine is to "change an underhand Scotch Verdict of Not Proven into an honest English Verdict of Not Guilty" (108). A verdict of Not Proven indicates that, in the opinion of the jury, there is insufficient evidence to convict the defendant. At a time when the English jury's reputation in criminal law trials was tarnished, its future depended on establishing its competency and accountability. This chapter demonstrates how the Scotch legal system's Not Proven verdict stands for the worst fears of the English legal system—a verdict without inherent meaning, where the meaning is created by the community and a defendant left in limbo. Critics suggest Collins is Orientalizing Scotland by having the English legal system conquer the Scotch; however, it is important to read this move within the context of the English cultural anxiety over the future of the jury. Collins's text reminds readers that despite bad verdicts in the English court system, such verdicts are preferable to ambiguous verdicts. Collins's text uses a failure of legal remedies to destabilize the law; Valeria Brinton must assume the fact-finding role to clear her husband Eustace Woodville of the Not Proven verdict on the charge of poisoning his first wife.

Collins is known for his use of the fictional legal narrative as a vehicle for reform. A brief turn to Collins's *The Woman in White* demonstrates this practice. As Jenny

Bourne Taylor observes, Collins's reputation as a novelist until recently has rested on *The Woman in White* and *The Moonstone* (iv). Serialized in 1860, and set in 1849 and 1850, *The Woman in White* follows in the wake of the highly publicized and discussed Parliamentary Debates on the Divorce Act of 1857 as well as the inception of the Divorce Court. *The Woman in White* can be read as entering into a conversation with the arguments for and against extended rights for married women from the Parliamentary Debates. This assessment is supported by Surridge: "though *The Woman in White* is set before the Divorce Act came into effect, its plot structure of domestic mystery, detection, uncovering, and dramatic public revelation is absolutely that of the post-1858 period" (145).

In the Preamble to *The Woman in White,* the narrative is placed outside the law: "but the Law is still, in certain inevitable cases, the pre-engaged servant of the long purse; and the story is left to be told, for the first time, in this place" (9). Mr. Kyrle advises Walter "as a lawyer, and as a lawyer only, it is my duty to tell you, Mr. Hartright, that you have not the shadow of a case" (108). In this way, Collins raises questions of legality while operating outside of the formal strictures of the law. This subversion of the law provides a narrative space in which to consider the opposing views on questions of divorce, evidence, and criminal responsibility. If *The Woman in White* and *The Law and the Lady* are shown to be participating in and exposing the anxieties surrounding the legal debates of the Victorian period, then this approach establishes another way in which sensation novels are subversive.

The Law and the Lady was serialized in the *Graphic* and published in three volumes by Chatto & Windus in 1875. According to Taylor, Collins wanted to expand his readership; his aim was to "never remain satisfied with a familiar community of readers but to extend the boundaries of his audience: to try to reach that 'Unknown Public' beyond the pale of literary civilization" (x). His discussion of legal reforms, then, was designed to reach a wide audience of the Victorian public, and what better way to appeal to a large swath of English society than through narrating nineteenth-century anxiety over that most English of institutions—the jury. In *The Law and the Lady*, the Scotch verdict of Not Proven issued against Valeria's husband leaves the couple in a state of marital limbo until Valeria can find the facts which the jury could not to determine her husband's guilt or innocence. In the opening pages of the novel, we witness Valeria Brinton become Valeria Woodville; however, Valeria quickly discovers that her husband's name is Eustace Macallan, leading her to pursue the secrets of her husband's past. In this way, Valeria is placed in the role of detective. Receiving lies from her husband, she appeals to his friend Major Fitz-David for the truth. Unwilling to break his confidence with Eustace, Major Fitz-David allows Valeria to search for clues to her husband's "terrible secret," which she discovers is that a Not Proven verdict was issued against him after being tried for murdering his first wife with arsenic. Major Fitz-David provides Valeria her first definition of the Not Proven verdict:

> There is a verdict allowed by the Scotch law, which (so far as I know) is not permitted by the laws of any other civilized country on the face of the earth. When the jury are in doubt whether to condemn or acquit the

> prisoner brought before them, they are permitted, in Scotland, to express that doubt by a form of compromise. If there is not evidence enough, on the one hand, to justify them in finding a prisoner guilty, and not evidence enough, on the other hand, to thoroughly convince them that a prisoner is innocent, they extricate themselves from the difficulty by finding a verdict of Not Proven. (95)

Within Fitz-David's definition, there is the suggestion that the Not Proven verdict is considered uncivilized by the English for unspecified reasons.

I would argue that the allowance of doubt is what Victorians would find truly objectionable about the Not Proven verdict, especially in light of the English standards for jurors. In *Trial by Jury*, Patrick Devlin outlines the English jury's role:

> The jury just says yes or no. Indeed, it is not allowed to expand upon that and its reasons may not be inquired into. It is the oracle deprived of the right of being ambiguous. The jury was in its origin as oracular as the ordeal: neither was conceived in reason: the verdict, no more than the result of the ordeal, was open to rational criticism. This immunity has been largely retained and is still an essential characteristic of the system. (30)

Not allowing juries to express their doubts or present anything other than unambiguous verdicts was not without its troubles in the Victorian legal system. Indeed, the question of how to achieve unanimous verdicts from juries without sacrificing justice was one which troubled both the authors of legal treatises and the Victorian press. Rather than

allow ambiguity, the legitimacy of the nineteenth-century English jury was being bolstered by a sea of legal treatises directing the jury's treatment of evidence. Up until the sixteenth century, juries reached decisions based on personal knowledge of the facts of a case; therefore, the need for guidance in measuring this knowledge was not apparent. Once the use of the jurors' personal knowledge ended, and jurors were expected to evaluate evidence presented in court, judges began to provide instructions about how to process the assessments jurors were making in a systematized manner. In England, the standards for jury decision-making mirrored the contemporary philosophical thought as legal treatises borrowed language from philosophers. For example, Barbara Shapiro explores how Lockean conceptions of knowledge shaped legal treatises on the rules of evidence in Victorian courts. John Locke envisioned probability as a graduated scale that extended from the unlikely "mere opinion" through the probable "confidence" to a still higher category called "rational belief" or "moral certainty." Victorian legal treatises used reigning empirical philosophies, such as Lockean degrees of certainty, to form the concept of the beyond the reasonable doubt standard that judges adopted in courtrooms. Jurors were instructed to decide on "moral certainty" or certainty without doubt when no absolute certainty is obtainable in the empirical realm (Shapiro 41). The Victorians wanted processes quantified, measured and explained; the deliberation of the jury lacks this transparency (Devlin 71). Instead of allowing for transparency, the Not Proven verdict ushers in doubt. Walter E. Houghton discusses the Victorian anxiety over doubt and how "a succession of doubts may finally merge into one overwhelming doubt that anything is worth doing or life worth living" (73). In *The Law and the Lady*, the Not

Proven verdict casts a shadow of doubt over the remainder of Eustace Macallan's days; as a result, Collins's attention to the Scotch legal system suggests to the English how much worse its doubts could be if it allowed ambiguity in jury verdicts.

Collins promotes the English legal system, but part of his fictional legal narrative exists decidedly outside of Victorian legal culture—his envisioning of Valeria as a lawyer. This obvious step outside of the law signals that *The Law and the Lady* exists at least in part as a competing "law," providing Collins with the space to use the law to build his literary identity. If in *The Eustace Diamonds* (1871), Lizzie is thought to have made a good lawyer, then in *The Law and the Lady*, Valeria goes a step further and actually acts as an attorney, arguing to her husband that "what the Law has failed to do for you, your Wife must do for you" (108). Valeria does not blindly accept Major Fitz-David's explanation of the Not Proven verdict. Instead, she consults Ogilvie's "Imperial Dictionary," which states, "A verdict of Not Proven only indicates that, in the opinion of the jury, there is a deficiency in the evidence to convict the prisoner" (108). Based on this definition, Valeria sees the verdict as only representing the jury's lack of a decision. Valeria's thinking shifts from the opinion of the jury to the "opinion of the world," as she expresses her determination to collect the evidence necessary to prove Eustace's innocence. Upon Valeria's discovery of her husband's secret, Eustace abandons her, requiring the intervention of Eustace's lawyers to service the settlement payment of one half of his income. When Valeria refuses Eustace's payment, her encounter with the lawyers turns hostile. The lawyers are shocked by Valeria's response; one partner asks for her reasons while the other reminds him that she "was a lady, and had therefore no

reasons to give" (110). Valeria's disregard for legal professionals must be considered against the male characters' admiration for lawyers in the novel. When Valeria decides that she wants to make it her life's work to prove her husband's innocence, Eustace's protestations center on his faith in the law: "My defense was undertaken by the greatest lawyers in the land, he said. After such men have done their utmost, and have failed—my poor Valeria, what can you, what can I, do? We can only submit" (100). Valeria argues that "the greatest lawyers are mortal men" who have made mistakes. Valeria's uncle also chastises her for being "conceited enough" to think she can succeed where lawyers have failed (112). Like Beatrix in Braddon's *An Open Verdict* (1878), Valeria is unwilling to place blind trust in the legal practitioners. This suspicion of the legal order allows both Collins and Braddon to carve out a space to write outside of the law and imagine extralegal solutions to legal problems. In this manner, authors demonstrate literature's ability to enact justice outside of the common law and statutes.

As John Reed suggests, once the Not Proven verdict has been delivered in *The Law and the Lady*, "only someone outside the regulations of the law can informally prosecute the case; remarkably for a Victorian novel that person is a determined young woman" (222). In support of my position, Catherine Siemann argues that Valeria assumes the role of appellate lawyer to fix the verdict. Valeria not only assumes the role of a lawyer, she also explains how she will distinguish herself from what a licensed lawyer could do; she believes she will be able to ask the questions that lawyers might think it beneath their dignity to pose. Valeria is not interested in following legal protocol; she condemns the prosecutor's address to the jury for stating his belief in Eustace's guilt, a

statement entirely expected from a prosecutor. In fact, she acts violently towards the law, tearing the pages of the prosecutor's address to the jury from her husband's trial book. The transcript of the trial is filtered through two narrative lenses, as Valeria reads a report of Eustace's trial and then reproduces it in the narrative. Thus, the transcript is fashioned as more of a narrative than a legal document. At first, the reader is given the sense of this transcript's legal accuracy: "turning to the second page of the Trial, I found a Note, assuring the reader of the absolute correctness of the Report of the Proceedings….It was some relief to me to discover this Note, and to be satisfied at the outset that the Story of the Trial was, in every particular, fully and truly given" (153). Witness testimony is presented in the novel as having been reproduced verbatim from the trial transcript; however, Valeria also announces herself as an editor. She even edits the "glorious oratory" of her husband's defense attorney explaining in a parenthetical, "I wish I had room to quote more of it!" (167). A key moment when Valeria assumes the role of editor is immediately before the jury gives its verdict. Valeria directs her wrath towards the judge in his directions to the jury. The judge instructs the jury that it must be satisfied with circumstantial evidence, a point to which Valeria takes no issue. In addition to instructing the jury to accept circumstantial evidence, Valeria believes the following instruction to the jury sealed her husband's fate:

> But, having told the Jury they might accept circumstantial evidence, he turned back again on his own words, and warned them against being too ready to trust it! "You must have evidence satisfactory and convincing to

> your own minds," he said, "in which you find no conjectures—but only irresistible and just inferences." (170)

Valeria believes that the jury would have been "thoroughly bewildered" by the judge's instructions and therefore "took refuge in a compromise" (170). Although emphasizing how the charge of the judge bewildered the jury, Valeria only includes an excerpt from the judge's charge in the narrative, saying "I need give no further extracts from the summing up" (169). Collins's narrative technique has several implications. With Valeria controlling the evidence, the reader is not able to make a decision about the case based on the complete trial record, with the effect being that the case is taken outside of the law. Frustration ensues, for deep in the trial transcript we are now eager to be put in the jury's place. Despite removing the illusion of legal realism, the narrative manages to place us in the same emotional state as the jury. Valeria assumes that the jury is bewildered by the judge's charge; as readers, we are equally bewildered by Valeria's narrative omission. The narrative technique creating confusion in the reader does not allow for passive intake but instead encourages active reading, replicating the attention necessary for the ideal jury to weigh the evidence.

Valeria describes the Scotch verdict as "timid and trimming" (170). Indeed, it only took the jury one hour to deliberate. If the jury were to try to reach a unanimous verdict of either innocent or guilty, one would expect a much lengthier deliberation, given reports from the Victorian press that jurors were deprived of food and drink for long stretches of time. If the future of the English jury was questioned because of complaints of expense and delay, then Collins reminds us of a greater danger in the hasty

Scotch verdict. Graham Willmore in *Is Trial By Jury Worth Keeping?* (1850) argues against the notion that the time-consuming nature of a jury deliberation warranted its demise, suggesting that "there cannot be a more dangerous delusion in politics, than to suppose an institution good because it is cheap, or bad, because it is deliberate, or even tedious" (4). Valeria also adds as an aside that "a jury of women would not have taken a minute!" (170). The implication seems to be that women would immediately reach the "lame and impotent conclusion" of Not Proven to avoid a difficult decision. As in *Mr. Meeson's Will,* Collins allows the reader to imagine a jury of women, which would not be established in England until 1920. By stepping outside of the narratives given precedential effect by the common law, Collins's writes his own "law" in *The Law and the Lady*. Valeria's imagining of a female jury is derisive; however, her viewpoint is explained by the patriarchal law that binds women in the narrative. As in *The Woman in White,* Collins takes up the issue of marital cruelty. When Eustace finds out through a newspaper article that Valeria has gone against his wishes and not abandoned her investigation of the Not Proven verdict, his face darkens but he ultimately consents to trust his wife. Valeria shows compassion for the wives that might not have such sympathy: "My heart turned pityingly to those other wives, whose husbands, under similar circumstances, would have spoken hard words to them—would perhaps even have acted more cruelly still….What had I done to deserve my happiness? What had they done, poor souls, to deserve their misery?" (370). In this manner, we imagine a female jury to lack agency, to live under the fear of marital cruelty. At the same time, Valeria is "thoroughly disgusted" by Major Fitz-David's marriage to an overdressed opera singer.

The young lady marries the old man for financial support and Valeria calls the union a "vile bargain" (380). Valeria's self-proclaimed obstinacy, as well as her distancing of herself from other women, allows her to forge her independence as an amateur appellate attorney.

According to Mary Husemann, the Scotch verdict is not "lame and impotent as Valeria claims, it is actually very dynamic and potent because it recognizes a broader range of accountability than the absolutism of guilt and not guilty" (79). Most significantly, a Not Proven verdict could communicate the existence of a divided jury, which England had no way of documenting in its verdicts of guilty or not guilty. The question then becomes, is a Not Proven verdict the solution to the unanimity problem plaguing English juries during the Victorian period? A debate over ending the unanimity verdict in England raged because as, Brown suggests, "If a real unanimity of opinion existed in the vast number of cases in which juries pretend to find unanimous verdicts,—it would be a lie against nature, and nothing short of a miracle" (23). *The Law and the Lady* suggests the negative human repercussions to Not Proven verdicts; thus, while Collins invites discussion of the reliability of juries, he does not advocate for the ambiguity that a lack of unanimity would allow. Catherine Siemann argues that the Not Proven verdicts "expose the reality that verdicts may be less than reliable," which would be disconcerting to "a Victorian audience well-attached to its certainties" (20). Siemann's statement is inconsistent with the anxiety over the unreliability of English jury verdicts circulating in the Victorian press, however. The unreliability of jury decisions was already well-known by the English public, and by introducing the Scotch verdict

Collins demonstrates how the jury could be empowered to heighten the problems with ambiguity already plaguing the public's faith in the institution of the jury.

Collins's fictional Not Proven case follows many facts of a case that had already seized the Victorian public's imagination. Several critics see a connection between the trial in *The Law and the Lady* and the trial of Madeleine Smith in July 1857, which also resulted in a jury returning a verdict of "Not Proven with arsenic." The trial of Madeleine Smith "caused perhaps more excitement, both in Scotland and elsewhere, than any other murder trial of the century" (Maceachen 136). Madeleine Smith was a twenty-one year old accused of poisoning her lover, Pierre Emile L'Angelier. As in *The Law and the Lady*, Smith's defense team argued that the arsenic was purchased to improve a bad complexion. Karin Jacobson sees the important similarity between the two trials as lying in the Not Proven verdict. According to Jacobson, "In the course of both investigations, the law becomes entwined with the sensational narratives it seeks to make 'plain,' breaking the boundaries between legal and emotional discourses, between law and ladies, between the plain and the ornamental, and, finally, between the domestic and the uncanny" (285). In other words, Jacobson reads the novel and the Madeleine Smith trial together as an expression of the difficulty of mapping women's sexuality onto legal discourse (285). What Taylor finds compelling when analyzing the similarities between the cases is that Madeleine Smith's letters to her lover were read to the courtroom just as the prosecution reads from Eustace Macallan's diary during his trial. Ultimately, Taylor argues that through references to the Madeleine Smith case Collins is "both obliquely implying Eustace's moral if not actual responsibility, and drawing on these earlier

resonances to suggest that the central question of the trial is somehow bound up with perceptions and anxieties surrounding femininity as masquerade, or impersonation" (xx). My reading of the Madeleine Smith case focuses on the representation of the jury. As in *The Law and the Lady*, the jury in the trial of Madeleine Smith deliberated for a short amount of time, returning a Not Proven verdict in thirty minutes. With a trial lasting nine days and individual orations spanning four hours, it is difficult to see how the jury could have processed all of the facts of the case in such a short time frame. Both the Madeleine Smith trial and Collins's fictional representation of the Not Proven verdict demonstrate how easy it is to decide not to decide, and how dangerous this level of uncertainty is for any system of justice.

The law fails on both a systematic and individual level in *The Law and the Lady*, not only through the issuance of a Not Proven verdict but also in Eustace's inadequate representation by his legal counsel. According to Maceachen, "The Collins lawyer is a faithful family friend, banker, investment broker, and confidential adviser on every subject" (127). To complicate Maceachen's assessment, Collins's representation of the Macallan family solicitor Mr. Playmore is not one of admiration or admonishment. The lawyer is not the hero of the novel, but he is also not the villain. Instead, Playmore is "a cheerful Scotchman… neither old nor young, neither handsome nor ugly; he was personally not in the least like the popular idea of a lawyer; and he spoke perfectly good English, touched with only the slightest possible flavor of a Scotch accent" (256). In *The Law and the Lady*, the Scotch identity is juxtaposed with a fierce sense of English pride—the absence of a Scotch accent has a positive connotation in this instance. The

crux of this novel depends on a custom that illuminates the distinction between English and Scotch lifestyles. Critical evidence revealing Eustace's first wife's suicide is found in a shredded letter that remains in a dustheap. According to Playmore, "In tidy England, I suppose, you would have all that carted away out of sight. We don't mind in Scotland, as long as the dust-heap is far enough away not to be smelt at the house" (270). Collins has been accused of Orientalizing Scotland, in that "he exploits the difference between England and Scotland to justify English identity, suggesting that greater English authority in Scottish affairs would help the Scots manage their untidy legal system" (Husemann 81). According to Anne Longmuir, "Critics have not given Collins's interest in the heterogeneous nature of the British state the attention it deserves" (165). In *The Law and the Lady*, Longmuir sees Scotland, in particular its legal judgments, as a force interrupting the order of civilized England. Again, reading the English law as civilized seems to ignore Collins's practice of engaging with legal frameworks in flux, such as the debate over The Divorce Act surrounding *A Woman in White*. Additionally, Collins shows Eustace's attorneys in England to be as unimpressive as Playmore. Longmuir reads Valeria's attempts to challenge the undecidability of the Scotch verdict as a mechanism for "restoring both the normative English social sphere and her own identity" (171). As in *A Tale of Two Cities* (1859), where Dickens's narration of both English and French trials allows for a comparative legal analysis, Collins's fictional narrative illustrates the ways in which the Scotch verdict wrecks havoc on the English social order, and thereby can be viewed as a cautionary tale against reforms to the English jury that might relax the requirements on unanimity.

Beyond Playmore's Scotch identity, Collins's technique of sidelining the lawyers in his fictional legal narrative allows him space to forge his literary identity. Playmore does not assume a role of authority in the novel; rather, Collins positions Playmore in a supportive role to assist Valeria's pursuits in her role as an amateur detective. Valeria reports to Playmore on the new evidence she has obtained in the case of her husband, Eustace Macallan, and Playmore is pleasant about admitting her superior perspective: "Here is the client leading the lawyer" (257). As in Trollope's *Orley Farm*, Collins's lawyer struggles with the boundaries between the personal and the professional. For example, Playmore withholds a new idea he has pertaining to Eustace's case from Valeria on the grounds of "professional caution" (257). Excusing himself, Playmore admits, "I don't want to be professional with you—my great anxiety is to avoid it. But the lawyer gets the better of the man, and refuses to be suppressed" (257). In other words, Collins explores the complicated ways in which a lawyer negotiates his personal interactions. During the second half of the nineteenth century, codes of professional responsibility for attorneys were under development. Thus, Collins's depiction of attorneys is more than character development; it is "law," filling in a gap in the standards for legal professionals. Playmore describes the experience where "the lawyer disappears and the man resumes his proper place" (258). In this way, the phenomenon suggests that the lawyer cannot be a man while being a lawyer, that law robs a man of his humanity and requires machine-like responses. Significantly, it is the lawyer who admits the law was unable to secure justice for Eustace: "The light which the whole machinery of the Law was unable to throw on the poisoning case at Gleninch has been accidentally let in on it by a Lady who refuses to

listen to reason and who insists on having her own way" (260). Valeria, while remaining in charge of the investigation, comes to rely on Playmore's legal opinion as she investigates her husband's case. When she includes a memorandum from Playmore, Valeria simultaneously accepts and rejects it in the narrative, self-consciously justifying its inclusion through a disclaimer: "If you don't agree with this view, and if you are dying to be done with me and my narrative, pass on to the next chapter by all means!" (372). Like Beatrix in *An Open Verdict*, Valeria ultimately trusts her own abilities above those of her lawyer. Even in the final pages of the novel, she considers her influence on her husband "to be decidedly superior to the influence of Mr. Playmore" (376). In addition to critiquing the Scotch verdict, Collins's representation of lawyers' failures allows for the competing "law" in his fictional legal narrative.

Collins completed his legal training at Lincoln's Inn between 1835 and 1842 but never entered legal practice. Maceachen argues that Collins's background in the law inspired him to write to usher in legal reform, and he was particularly effective at bringing obscure legal injustices such as the Not Proven verdict to the eyes of the public (121). According to Maceachen, Collins's novel uses a poor case to make a claim against the Not Proven verdict, for Eustace Macallan does not have the reader's sympathy. Indeed, from the beginning of the novel, Eustace's impulse to explain away the inconsistencies in his life story with ridiculous lies only heightens Valeria's "miserable conviction that there was an abyss in the shape of a family secret" (35) between her and her husband. She learns that the legality of her marriage is in question from her nosy landlady and uncovers the truth of her husband's past by being handed the book of his

trial by a coarse young showgirl. Upon the unveiling of his secret, Eustace abandons Valeria to fight in the war and his wife finds him cruel to have deliberately added to her anxiety. Like Bella Scratchell in Braddon's *An Open Verdict*, Miserrimus Dexter in *The Law and the Lady* tampers with evidence essential to the resolution of the legal plot. Dexter steals a letter Sara Macallan left for her husband under her pillow. Sara explicitly asks Eustace to prevent a postmortem examination by producing her suicide note, for she "wants nobody to be blamed or punished" (363). Playmore speculates that if a guilty verdict had been issued against Eustace, Dexter would have come forward with the letter; it was only in the unresolved state created by the Not Proven verdict that Dexter was willing to suppress the evidence to make his enemy suffer. Collins demonstrates another pitfall to the Not Proven verdict, arguably, that without true wickedness an unjust verdict is able to stand. Ultimately, Sara Macallan's suicide note reveals the extent to which Eustace's flirtations with another woman provoke his first wife's jealousy and despair. Instead of a flawed case to protest an unjust verdict, Collins's narration of Eustace's imperfections make the fictional case study more compelling. Eustace is not a saintly figure obviously wronged; rather, he is a human any reader could relate to in his missteps and insecurities. It is this relatable quality that inspires sympathy with the repercussions of the open verdict; Eustace's lack of openness with his first wife does not mean that he deserves to be considered a possible murderer for the rest of his life. Collins's technique of using a flawed test case returns us to the frustration of the reader at the reading of the Not Proven verdict in the trial transcript, inspiring self-consciousness over the responsibility to squash ambiguity in jury trials.

PATTERNS OF RESISTANCE: BRADDON'S "LAW"

Like Collins, Braddon maintains a questioning attitude toward the law; in *Lady Audley's Secret* (1862), *An Open Verdict*, and *The Lawyer's Secret* (1861), she narrates legal situations only to discredit or explain why the law is incapable of assuring justice within these circumstances. In *Beyond Sensation*, James Kincaid identifies the "Braddon problem" as captured by Lauren Goodlad, viewing Braddon as "a popular writer whose works dramatize ('sensationalize,' 'gothicize') women's lives without articulating any obvious 'feminist' position" (xii). Braddon's treatment of the law presents its own "Braddon problem"— Braddon utilizes the legal narrative to cast doubt on our faith in lawyers and legal institutions, but does not offer a vision for reform. Unlike Trollope, who includes an authorial aside decrying the unanimity requirement in *The Three Clerks*, Braddon does not broadcast her legal opinions. In response to critics who find Braddon's work to subscribe to normative Victorian standards of morality, some critics find "resistance" in Braddon's work (Tromp and Gilbert vii). This license to question the law follows the pattern of resistance which recent critics find in Braddon's novels, particularly in *Lady Audley's Secret*.

According to Houston, *Lady Audley's Secret* "stands out as a commentary on the law's machinations" (18). Indeed, *Lady Audley's Secret*, partially serialized in 1861, abandoned, and then published in full in 1862, has been discussed alongside marriage reform and enclosure acts to understand the law's impact on Victorian women (Langland 3). Beyond the feminist readings of this text, Braddon offers a detailed portrait of an underachieving legal professional. Robert Audley is "supposed to be a barrister…but he

had never either had a brief, or tried to get a brief, or even wished to have a brief in all those five years, during which his name had been painted upon one of the doors in Fig-tree Court" (32). Far from a serious professional, Robert reads French novels, strolls in Temple Gardens, and rescues stray dogs. When George Talboys asks Robert to be the guardian of his son, Robert feels it is a great responsibility for someone who could never take care of himself. The force of Robert Audley's ineffectiveness is magnified when read against another Braddon novel from the same year. *The Lawyer's Secret*, which appeared in *Welcome Guest* and *Littell's Living Age* in 1861, is a novella based on the familiar fear that one's lawyer, a trusted advisor, will be a liar and a cheat. The lawyer in this text, Horace Margrave, is not only the guardian of a young orphan woman named Ellinor Arden but also the object of her affection. Margrave has been entrusted with the small fortune Ellinor has inherited from her mother. In addition, when her uncle John Arden dies, Ellinor is named the sole beneficiary. Arden's will includes the condition that in order to maintain the fortune, Ellinor must marry Henry Dalton, her uncle's adopted son, within a year of her majority. Motivated by love, Margrave attempts to increase Ellinor's small inheritance from her mother so that when the time comes to choose she will be free to keep her mother's fortune and become his wife. In the process of trying to grow the inheritance, Margrave instead speculates away Ellinor's uncle's fortune. Margrave confides in Henry, requiring him to keep silent about the loss of the fortune. Upon her marriage to Henry, Ellinor sees her new husband's subsequent stinginess as reflecting bad character, when, in fact, the couple has no fortune to spend.

Margrave waits until he is on his deathbed to confess his failed speculation to Ellinor. At the end of the novel, Ellinor forgives Margrave and reconciles with her husband.

In *The Lawyer's Secret*, Braddon, like Trollope and Collins, confronts the issue of a family placing blind trust in its family solicitor. For example, in *The Eustace Diamonds*, "every word that Mr. Camperdown said was gospel to Lord Fawn" (132). Similarly, in *The Lawyer's Secret*, Ellinor's trust in her guardian reaches levels of infatuation and devotion; however, in the first chapter, once Margrave chastises himself—"Horace Margrave, if you had only been an honest man"—the reader realizes that the attorney is not the trustworthy guardian that the heroine sees (11). The contrast in the title between the cold and impersonal "lawyer" as opposed to Mr. Hargrave and his intimate "secret" mirrors the tension between the professional and the personal lives of lawyers which interested both Dickens and Trollope. Like Furnival in *Orley Farm* (1862) and Jaggers in *Great Expectations* (1860-61), Margrave is represented as both a man and a professional; indeed, the narrative reveals to us Margrave's professional judgment being clouded by personal feelings of love for his ward. Additionally, a lawyer is expected to keep the confidences of his clients; however, in Braddon's novella, the lawyer demands confidentiality from Dalton, who is a poor but rising barrister himself. Margrave's secrets should be those of his clients, not his own. As Matthew Sweet suggests, "Before the details of his shame are explicitly revealed, you are likely to have divined the nature of the lawyer's secret" (xii). With this knowledge early in the novel, the reader is able to see how stereotypes about lawyers sustain the story and prolong the time before the unveiling of Margrave's secret. For example, the mystery as to why

Dalton withholds money from Ellinor during their marriage is prolonged by Ellinor's ability to explain away his parsimoniousness through the stereotypes of a lawyer:

> I dare not order a jewel, a picture, an elegant piece of furniture, a stand of hothouse flowers; for, if I do so, I am told that the expenditure is beyond his present means, and that I must wait till we have more money at our command. Then, again, his profession is a thousand times dearer to him than I. No brief-less, penniless barrister, with a mother and sister to support, ever worked harder than he works, ever devoted himself more religiously than he devotes himself to the drudging routine of the bar. (26)

In *Miss Mackenzie* (1865), Trollope wonders about how easy it is to perpetuate negative stereotypes about lawyers in general while at the same time, trusting one's own attorney: "is it not remarkable that the common repute which we all give to attorneys in general is exactly opposite to that which every man gives to his own attorney in particular?" (167). Ellinor places blind trust in her own solicitor Margrave, while subjecting her husband, who is also a lawyer, but not her own, to the common judgments against the profession.

Braddon's Margrave is not only unethical, he is also feminized; his secret brings on a fever attack that the doctors attribute to nerves. Margrave's response is "A nervous lawyer! My dear Mrs. Dalton, can you imagine anything so absurd?" (36). It takes Horace Margrave's imminent death from typhus fever to confess his wrongdoings to Ellinor: "for God's sake, Ellinor, no tenderness! That I cannot bear. For four years you have never seen me without a mask. I am going to let it fall. Henceforward you will think of me with scorn and detestation" (66). Margrave explains that he made Henry

Dalton bear the weight of his secret because he did not believe he would live long and could not bear the thought of Ellinor's contempt – Margrave's actions as a lawyer are motivated by emotions and protecting his own heart without regard to the practical consequences to his client. In short, despite his own wealth and stature in the community, the lawyer wrecks havoc on the lives of two young orphans in a botched attempt to gain further wealth. Braddon's plot of a lawyer's actions may seem far-fetched, but as in *The Law and the Lady*, this fictional legal narrative emphasizes the lack of a code of professional responsibility for lawyers in the Victorian period. Rather than creating a representation of a lawyer that falls far outside of the realm of what was acceptable for legal professional behavior, Braddon's text reminds readers that there was no standard in place, thereby drawing attention to the danger in a lack of standard. In portraying an incompetent lawyer who preys upon the goodwill of a young orphan, Braddon requires her readers to take pause before trusting their lawyers implicitly. Thus, Braddon carves out space for her competing version of the "law," receiving development in *An Open Verdict* (1878).

Like Collins's *The Law and the Lady*, Braddon's *An Open Verdict* treats circumstances in which the legal process fails to produce a decisive result. Although English criminal law does not have the equivalent of the Not Proven Scotch verdict, it does allow an open verdict in a coroner's investigation. The open verdict in an inquest is not a verdict against a defendant; therefore, it cannot be analogized with the Not Proven verdict. By positioning her narrative in a space where the law is unable to satisfactorily to secure justice, Braddon emphasizes the disconnect between law and justice and puts

forward literature as a "law" for envisioning justice beyond legal remedies. Braddon's representation of the jury not only captures the public's anxiety but also is significant to understanding her literary vision. While *The Law and the Lady* may be categorized as a non-canonical work by a canonical author, Braddon's *An Open Verdict* is out of print; so, a plot summary is useful. Braddon's novel revolves around an open verdict—the jury finds "Mr. Harefield had died from the effects of laudanum, but by whom administered there was no evidence to show" (58). Mr. Harefield's daughter Beatrix purchased small quantities of laudanum at several shops to combat her own sleeplessness. Beatrix's sleeplessness is due to her father's refusal to approve of her chosen suitor Cyril Culverhouse. Although Beatrix has won Cyril's heart, the governess Bella Scratchell has also fallen in love with him. In an act of jealousy, Bella steals a letter from Mr. Harefield to Beatrix on the day of his death, taking control of Beatrix's legal fate. Without this crucial piece of evidence, Beatrix is suspected of poisoning her father, and loses the affections of her suitor.

A contemporary reviewer sees *An Open Verdict* as a departure from Braddon's sensational legal texts that take a page out of the *Newgate Calendar*, for "in spite of its professional title, [the work] contains no graver crime than larceny, and no actual breach of any other article of the Mosaic Code than the fraudulent abstraction of a document involves" ("An Open Verdict," *Examiner*, 246). Turning to *The Newgate Calendar*, one could argue against the notion that the open verdict was not a legal process rife with violent connotations:

> On Monday morning an inquest was held at Baitsbite, near Cambridge, on portions of a child which had been found piecemeal in the Cam. The body, which had been in the river about a week, was ripped up and mutilated, was deprived of both legs and left arm, and decapitated. There was nothing to throw further light on the horrible affair, and an open verdict was returned. (177)

This entry from 1872 is all the more horrific for its ending—the open verdict amounts to the law throwing up its hands and giving up. The narrative of a Victorian trial transcript bears much similarity to the resolution found in the three-volume sensational novel; however, an open verdict disrupts our sense of this similarity, as it designates the case as unsolvable and the ending unwritten. Thus, Braddon's narrative of the open verdict supplies the "law" by providing the decisive conclusion the legal system was unable to produce. Although Braddon does not announce her vision for legal reform in the novel, she does repeatedly suggest that the answer to just verdicts can be located in the tenets of empiricism. In the Victorian public's imagination, the open verdict would be associated with disappointment and incompetency. For example, in the treatises surrounding the infamous Road Murder case of 1860, in which an open verdict was returned, voluminous notes suggest that "the Coroner's Inquest was a bungle" (Stapleton 4). Additionally, an interview with a member of the jury hearing the Road Murder case in 1861 provides confirmation of this sense of disappointment: "I do say I am discontented, for my own part, to the bringing in of an open verdict. I did not feel that we were doing justice to ourselves or giving satisfaction to the country" (*The Road Murder* 109).

The legal plot in *An Open Verdict* may be less sensational than in Braddon's previous works; however, this fact does not detract from the treatment of the law in the novel. Rather, the emphasis on everyday life allows Braddon to offer a serious consideration of legal culture. Braddon engages with the same questions regarding the ethical standards for lawyers raised by other Victorian novelists; yet, unlike the case for Collins and Dickens, nothing in Braddon's biography suggests a connection to the law. This fact allows us to approach the question of why her works treat legal themes apart from a biographical explanation. Far from an issue that only appealed to those with a background in the law, the future of the institution of the jury led to a debate that impacted and shaped the thoughts of the non-legal population and resonated in the cultural memory. *An Open Verdict* is grounded in the coroner's jury, which reflects the early jury more than any other modern forms. Early jury practice, brought to England by the Normans, was based on an oath a juror made to the King. The oath-takers served in inquests not unlike the procedure at a coroner's inquest. The coroner's jury of the nineteenth century has been characterized as "grafting a judicial character upon an inquisitorial office" (Devlin 163). In *An Open Verdict*, the coroner's jury does not state the cause of death; this is an instance of the law creating uncertainty that Braddon uses to create suspense. Beyond the purposes of plot, Braddon's representation of the coroner's jury raises questions about communal processes and illuminates the human repercussions of ambiguity in legal verdicts, as in *The Law and the Lady.*

Sydney Taylor, in *A Digest of the Law and Practice Relating to the Office of the Coroner*, outlines the standards for a jury's verdict in an inquest:

> The verdict of the majority of the jury, if at least twelve, may be taken. Failing agreement on verdict, the coroner may detain the jury, or adjourn to the next assizes, in which case their recognizance should be taken. But the difficulty of non-agreement can generally be avoided by leaving part of the verdict open. The coroner must accept the jury's presentment. The coroner should not unduly influence the jury, who should arrive at their finding in private and announce it publicly. (20)

Braddon frames the inquest as being guided by human errors –"one or two jurymen late—a good deal of blundering in calling over the names—some small disputations about nothing particular—a general muddling away of time" (II.18). In other words, we look beyond the ideal of the law to the operation of the law, which cannot exist separate from the unpredictable nature of man. Braddon's description of the jury, like Dickens's in "Some Recollections of Mortality" (1873), focuses on the furniture the jury sits upon rather than the jurors' faces; the jurymen sit in "heavy oaken chairs" (II.18). The jury is described as "looking very much as if they were sitting at a new Barmecide's dinner" (II.19). A "Barmecide's dinner" is one with imaginary food, an interesting situation, seeing that the withholding of food from a jury until a verdict had been reached was part of the argument about systematic mistreatment of jurors circulating during the nineteenth century. Starving a dissenting juror was allowed unless a juryman's life was in danger.

The illusory quality of the feast also points to the lack of evidence in front of the jury, and the way in which a decision will be reached based on intangible impressions and instincts about Beatrix. For example, when Beatrix admits to the coroner that she had recently purchased laudanum for her own sleeplessness, the jury responds:

> The jury, who had been getting a little absent-minded during what they considered a somewhat wire-drawn interrogation, became suddenly on the alert. Four and twenty eyes were fixed inquisitively upon the pale face of the witness. (II. 29)

The jury reacts to the sensational but circumstantial evidence about the laudanum but not the servants' testimony of their own observations. The most profound description of the jury's reliance on perceptions rather than evidence is in the way the jury reacts to the change in Beatrix's appearance from the day of her father's death to a week later:

> She was deadly pale, but firm as a rock. That firmness of hers, the calm distinctness of her tones, the proud carriage of her beautiful head, impressed the coroner and jury strongly, but not favourably. They had been more ready to sympathize with her a week ago, when she had stood before them trembling, and bowed down by her distress. (II. 56)

Beatrix's apparent strength is interpreted by the jury as suspicious. In this way, the law is depicted as failing to support women in their independence and perpetuating ideas about female hysteria. One wonders if she had appeared as distraught and feverish as Horace Margrave in *The Lawyer's Secret* if the jury would have still issued an open

verdict. Following the detailed account of witness testimony and evidence presented throughout the coroner's hearing, the jury's verdict is stark in comparison: "The jury agreed upon their verdict, after some deliberation" (II. 62). The narrative silence surrounding the verdict is what one would expect as a spectator in the courtroom, but in this third-person omniscient narration, Braddon chooses not to narrate the jury's deliberations. The tonal shift of the chapter causes the verdict to feel like suppression. The verdict ends the chapter and the narrative shifts to a drawing room scene. The abruptness of the shift in combination with the under-narrated verdict juxtaposed with a careful presentation of all the evidence of the case compels the reader to narrate the jury's deliberations. Braddon's use of a narrative silence elicits a response from her readers, and we become the jury.

In contrast with *The Lawyer's Secret* (1861), the lawyer's role in *An Open Verdict* does not include providing solace for its female heroine. At her father's death, Beatrix does not "throw herself into the sanctuary of English law" (II. 19). Unlike Trollope's characters that hold their family solicitors in great esteem, Braddon's heroine "had no instinct of her mind to seek comfort, counsel, or succor from Mr. Scratchell" (II.19). In particular, the family solicitor Mr. Scratchell is represented as a feckless automaton. Kenrick calls Scratchell "a piece of such common clay" that could not "comprehend the finer feelings of human porcelain" (II. 53). Indeed, Braddon portrays a village lawyer as someone not to be trusted blindly. Mr. Scratchell seems to be motivated solely by financial concerns, as he was "subservient to the last degree, his sole anxiety being to

retain his position, and to ingratiate himself and his family in Miss Harefield's favour" (II. 96).

Moreover, Mr. Scratchell treats his family in the business-like manner of a lawyer; he forces his daughter Bella into a loveless marriage so as to profit from the wealth of her suitor. Indeed, Scratchell pretends to be reluctant to give his young daughter's hand in marriage to the old man Mr. Piper so as to obtain a larger marriage settlement. Braddon represents an antagonistic relationship between Beatrix and her family solicitor. When advising Beatrix he cannot fathom why she would pay off the mortgages on Culverhouse Castle before becoming Sir Kenrick's wife and take on the "absurd" (II. 46) risk that the wounded soldier might die. He tries to protect her interests but in the end relents based on his own self-interest:

> To make himself disagreeable to Beatrix, even in the endeavour to protect her interests, might be fatal. Women are such self-willed, unreasonable creatures, he argued within himself. If he thwarted her in this ridiculous whim, she might resent his conduct all her life…He was as dependent upon the Harefield estate for sustenance as a barnacle on a ship's bottom. In a word he could not afford to offend her. (II. 46)

Mr. Scratchell protests to Beatrix that it would be impossible to immediately pay off the mortgage on the Culverhouse estate by a hasty sale of her stocks and shares. Beatrix's reply is that of an empowered woman like Valeria Macallan: "Nothing is impossible to a clever family solicitor; you can do the preliminary act by deposit of my deeds. Remember, Mr. Scratchell, if you accomplish this thing for me, I shall always consider

myself deeply bound to you. It is a favor I shall never forget" (II. 47). Rather than depending on Scratchell for advice, Beatrix asks her lawyer to do as she wishes despite his objections. Indeed, Beatrix turns to the Vicar, Mr. Dulcimer, for guidance in business, not spiritual affairs.

As in *The Law and the Lady*, female skepticism over an attorney's power is matched by a male confidence in the legal professional. Both Dulcimer and Cyril seek to obtain better legal representation for Beatrix at the coroner's investigation, as "Mr. Scratchell is very good as a collector of rents, but not exactly the man for a critical position" (II.41). When Beatrix receives representation at the coroner's hearing, it is by a nameless man, "a lawyer from London, a little dark man, with heavy eyebrows and a hard mouth, a defender who inspired Beatrix with a nameless horror" (II. 77). The lawyer does nothing but increase the community's suspicion. Rather than an act of empowerment, in Braddon's novel, Cyril's suggestion of hiring a London lawyer is the first indication of weakness in the face of Beatrix's misfortune. Cyril is unable to provide emotional support to Beatrix, as he believes it is his duty to put his profession first and distance himself from a woman tainted by gossip, even if that woman is his fiancée. Thus, Braddon suggests that extralegal methods may be the only way to truly secure justice for Beatrix. For example, Cyril's cousin Kenrick offers his own assistance instead of attempting to hire a lawyer. Mr. Dulcimer dismisses Kenrick's proposal, claiming that only a lawyer can help Beatrix. Yet Kenrick is the only person willing to put himself out as a provider of personal assistance instead of hiding behind the cold professional assistance of the law. Illustrating the tension between legal advocacy and communal

processes, Braddon's text suggests that legal professionals cannot provide a substitute for the support of one's community.

As in English jury trials, the thought process of the coroner's jury remains a black box in *An Open Verdict*; however, Braddon voices the anxieties of the Victorian public over the proceedings of the jury through the words of Beatrix's community. As discussed in chapter one, the impartiality of jurors was contested in the nineteenth-century debate over the future of the jury. In addition to calling the coroner "a hireling and a time-server" (II.84), Miss Coyle, the leader of the crusade against Beatrix, raises the issue of bias:

> I believe the coroner's jury would have come to a very different verdict if Miss Harefield had been poor and a stranger. Look at the men who were on the jury. Why, there was Haslope the grocer, who has served the Water House ever since he has been in trade; and Ridswell the upholsterer, who had the order for the funeral. Slavish creatures who have fattened upon the Harefield family! Of course they would not condemn the daughter of their patron. (II.124)

In *Is Trial By Jury Worth Keeping?* (1850), Willmore addresses the issue of jury bias in the nineteenth century, arguing that "every trial is a public lecture in impartiality" (40). At the same time, he acknowledges that impartiality is difficult not only for juries but also for magistrates:

> It is almost impossible for any one, however practiced, absolutely to shut out from the consideration of a case, all knowledge other than that which

> he has derived from the evidence. Every man who has had any experience of Quarter Sessions, must have often heard Magistrates commenting upon the acquittal of a prisoner in the following strain:—"That man ought not to have got off—we know him—he has maintained his family on plunder a long while—he has been the plague of the country—his brother has been transported—they are all a bad lot, and the greatest poachers in the neighborhood." And this without the slightest conception that they had any bias one way or the other! (54)

Indeed, Miss Coyle's criticisms seem to be based on the human element in jury decision-making, which is only accentuated by the uncertainty of an open verdict. By contrast, Sam Weller in Dickens's *The Pickwick Papers* says that Pickwick would not have been found guilty of breach of promise if he was in their profession. The discussion of jury bias comes from a conversation between Sam and his father over why the jury so easily came to convict Mr. Pickwick:

> "If your gov'nor had been a coachman," reasoned Mr. Weller, "do you s'pose as that 'ere jury 'ud ever ha' conwicted him, s'posin' it possible as the matter could ha' gone to that extremity? They dustn't ha' done it."
>
> "Wy not?" said Sam, rather disparagingly.
>
> "Wy not!" rejoined Mr. Weller; "cos it 'ud ha' gone agin their consciences. A reg'lar coachman's a sort o' con-nectin' link betwixt singleness and matrimony, and every practicable man knows it." (694)

Brown, in *The Dark Side of Trial by Jury* (1859), finds impartiality to be a problem among common jurors in a similar situation as described by Weller. According to Brown, in common juries, "all their partialities are saved up for brother chips, for carpenters, builders, tailors, shoemakers, and such like innocents, who are book to win the moment they enter the course with a gentleman to contest the reasonableness of their bills or his liability to pay" (15). If common jurors side with other men from their class, then, in Brown's estimation, they tend to find against those in positions of power without regard to fault—lawyers, railway companies, and insurance companies, just to name a few.

The narratives by Braddon and Dickens both highlight the tension over the issue of bias within juries and betray the anxiety of the public in trusting in panels of the general population, assembled without regard to class with this potential for bias. Devlin describes the English tradition of addressing the jury: "[Lawyers] should address the jury as an impersonal body of twelve and the less they know about them as men and women the better. In fact they know nothing at all about them; and it is very doubtful whether they would be allowed to find out anything very much" (34). Devlin acknowledges that American lawyers would be surprised to learn that the English trial system does not use voir dire to delve into the personal information of potential jurors. In Devlin's estimation, prejudices are rare and become so diluted in the jury's deliberations that their impact is negligible (34). If Victorians craved certainty, then the selection of a jury without the element of control that voir dire provides required a deep faith in the English common man. Public opinion is split as to the prevalence of jury bias; yet, in

combination with other factors such as the unanimity requirement and the education of jurors, jury bias demonstrates how the future of the jury intersects with questions of class and democracy central to the formation of the English identity.

The jury's inability to rule Mr. Harefield's death a suicide or murder leaves Beatrix open to attack, as the public opinion supplies its own definitive judgment of guilty when the jury was unable to make a decision. Beatrix Harefield may not be condemned by the jury of common people during the coroner's hearing, but she is held in suspicion by her neighbors and even her suitor Cyril Culverhouse. When Cyril considers the public opinion against Beatrix, the town becomes an individual: "Then as to motive? Well, one not look very far for that, argued Little Yafford" (II.83). The unification of a village into one voice mirrors how a coroner's jury ultimately becomes one voice. Yet Braddon emphasizes the lack of individual thinking in the voice of Little Yafford as a community. For example, when Beatrix confronts Miss Scales about the disapproving looks she receives in the village, Miss Scales is unable to provide a substantive response, but rather asks Beatrix not to ask her. Mr. Dulcimer, the erudite Vicar, defends Beatrix and calls the Little Yafford people "a set of venomous idiots" (II.114) for holding her in suspicion. Mrs. Dulcimer blames the "unsatisfactory" (II.131) nature of the coroner's verdict for the public suspicion of Beatrix. A nineteenth-century reviewer of *An Open Verdict* is of the opinion that Cyril is "not a nice young man" ("An Open Verdict," *Examiner* 246). Cyril leaves Yafford, abandoning his betrothed for the sake of "duty and honour" (II.82). In following the duties of his office, Cyril neglects his duties as a man who has made his intentions to marry Beatrix known. As Kenrick suggests, Cyril's

blindness is a product of public opinion: “Do you mean that you, a reasonable man, with eyes of your own and a mind of your own to see and judge with, are going to be led and ruled by the petty slanderers of Little Yafford?” (II.92). In Cyril’s absence, Kenrick proposes to Beatrix, who continues to hold faith in Cyril’s love despite his departure. According to Beatrix, “It was not his suspicion, but the evil thoughts of others” (II.130) that caused Cyril’s doubt. Another danger of the tide of public opinion is realized, as Beatrix is condemned by public opinion and then allows public opinion to excuse her beloved’s actions. Kenrick labels Cyril “a coward” (II.130), before his own death in battle in India.

If Cyril “hardly escapes the charge of being a bloodless prig,” (Cornell and Law 155) Braddon’s redemption of Cyril demonstrates the triumph of empirical evidence over public opinion. When Cyril returns to Yafford to attend the wedding of Beatrix and his cousin Kenrick, the lovers meet accidentally in a churchyard. Cyril denies having believed Beatrix to be a poisoner, which Beatrix quickly refutes: “You did not believe me innocent, or you would not have forsaken me” (II.76). In the face-to-face meeting, Cyril can see past the doubts of the community to the importance of making judgments based on physical observations: “But now that he stood face to face with her, now that he saw that noble countenance, the splendid indignation of those eyes, he was as convinced of her innocence as if he had never doubted her. His past doubts seemed madness, or worse than madness, diabolical possession” (II.77). This line of thinking resonates with some early forms of the jury, wherein those with personal knowledge of the defendant served as the tribunal. Direct observation is again emphasized at the end of the novel, when

Cyril pursues Beatrix to beg her forgiveness. According to Cyril, "I needed but to see you to know that you were innocent" (III. 267). While *An Open Verdict* demonstrates the ways in which law's solutions are often inelegant and devastating to the affected parties, Braddon also aligns herself with the empiricist tradition. Peter Garratt, in *Victorian Empiricism* discusses how mid-Victorian writers "were committed to the classic experiential doctrine—that 'experience is the sole origin of knowledge,' to use Herbert Spencer's phrase—while being increasingly aware of the problematic nature of observation itself" (16). As discussed in chapter three, a tension exists in Victorian novels between philosophies of law—empiricism or positive law and communal processes or natural law. Thus, Braddon's narrative focuses on an uncertainty created by the law not only for the purposes of plot but also to examine cultural anxiety surrounding the nonempirical nature of communal processes.

BEYOND THE JURY: *MR. MEESON'S WILL*

If Collins and Braddon represent ambiguous verdicts from juries, Haggard's *Mr. Meeson's Will* includes a juryless trial. Collins models his case off of the Madeleine Smith trial, while Haggard's fact pattern is firmly rooted in the world of fiction. Despite these differences, Haggard connects to Collins and Braddon in his engagement in questions about the role of legal advocacy and communal processes. On the subject of the "law" of fictional legal narratives, *Mr. Meeson's Will* is self-conscious about the ways in which the lines separating law and literature are blurred.

Like *An Open Verdict*, Henry Rider Haggard's *Mr. Meeson's Will* (1888) is a legal narrative that operates entirely outside of the canon; only a handful of articles have been published on this text. Best known for *King Solomon's Mines* (1885), which has been described as *Treasure Island* set in Africa, Haggard wrote novels set in Jerusalem, Egypt, Greece and Iceland. Set in England, *Mr. Meeson's Will* was seen as a departure from Haggard's usual subject matter. In the estimation of one contemporary reviewer, Haggard "has abandoned the fairyland of myth and marvel to give us here a clever, though slightly improbably, tale of real life" ("Mr. Meeson's Will," *The Dublin Review* 175). Despite a plot involving a will tattooed on a lady's back, *Mr. Meeson's Will* is perceived by nineteenth-century reviewers as a portrayal of common life when viewed through the lens of Haggard's exotic oeuvre.

In *Mr. Meeson's Will*, a shipwreck leaves the heroine Miss Augusta Smithers and her publisher Mr. Meeson on a deserted island awaiting rescue. Augusta and Meeson have previously quarreled over the meager sum she was paid for the rights to her novel, which is now a bestseller. When Meeson refuses to offer Augusta further compensation, Meeson's nephew Eustace confronts his uncle regarding the unjust terms of Augusta's contract. This confrontation leads not only to Eustace's dismissal from the publishing house but also to his disinheritance by Meeson. Once Meeson is on his deathbed following the shipwreck, he wishes to amend his will to reinstate Eustace as the beneficiary. Due to the lack of paper or linens, Augusta agrees to have Meeson's new will tattooed on her back. Two sailors witness Meeson's will, only to perish before a ship rescues the remaining survivors. Even following a sensational disaster in which most

passengers of the ship perish, and the survivors have little hope for rescue, they look to the law, not religion for salvation:

> Mr. Meeson was more or less acquainted with the formalities that are necessary in the execution of a will, namely: that the testator and the two witnesses should all sign in the presence of each other. He also knew that it was sufficient, if, in cases of illness, some third person held the pen between the testator's fingers and assisted him to write his name, or even if someone signed for the testator in his presence and by his direction. (53)

To his last breath, Mr. Meeson's life is governed by concern for legal propriety and adherence to legal procedure; therefore, one could easily dismiss *Mr. Meeson's Will* as a ridiculous satire on legal procedure. Haggard's satire is more in line with the Victorian canon; Jan-Melissa Schramm finds legal satire such as that in Thackeray's *The History of Pendennis* to acknowledge "a sensitivity to the nuances of the discursive struggle between legal and literary discourses" (281). Indeed, Haggard's novel is a meditation on the tensions between law and literature and the role of legal realism in forging literary identity.

Appearing in the summer number of the *Illustrated London News* in 1888, Haggard's sensation novel has been described as "exciting, if not altogether pleasing" ("New Books and Reprints," 27) and "partly a robinsonade; mostly mundane melodrama" (Mullen 287). Like Augusta, Haggard's work was popular with mass audiences; yet, his style was criticized for a lack of polish and limited vocabulary. A reviewer for *The Academy* discusses the "quite absurd condemnation" of the novel, finding Haggard's tale

"brightly written" while "inartistically improbable" ("Mr. Meeson's Will," *The Academy* 350). The tattooing of the will on Augusta is considered "bizarre"; however, a reviewer for *The Dublin Review* concedes that the tattooed will would, in actual practice, likely be admitted by the Court of Probate ("Mr. Meeson's Will," *The Dublin Review* 175). Along these lines, the reviewer also suggests that Eustace's barrister James Short's advocacy against a team of lawyers "is a curious anticipation of a striking feature in a recent sensational trial, subsequent, we should imagine, to the date at which the tale must have been written" (175). This statement winkingly points to the ways in which literature may influence legal culture, while at the same time emphasizing the legal realism in Haggard's novel. Reviewers evaluate the legal realism of Haggard's narrative, with assessments diverging wildly from the factual pattern being outside the realm of the possibility to even anticipating the law.

Though trained as a lawyer, Haggard devoted the majority of his time to writing novels; when he did practice law, it was in the probate and divorce courts. The inspiration for *Mr. Meeson's Will* may have derived from Haggard's work as a lawyer and interactions with other lawyers. Writing in an 1888 edition of the *London Globe*, a barrister identified only as J.L.A.M. alleges that the idea of a woman tattooed with a will and being treated as a legal instrument arose in the context of lawyers exchanging anecdotes regarding legal practice. J.L.A.M. alleges that one such anecdote concerned a Chancery lawyer tricked into writing an opinion on whether a will tattooed on a person's back could be admitted to probate. In this anecdote, the Chancery attorney wrote an elaborate opinion, setting forth why the will could be admitted into probate before

realizing that the assignment to write the opinion was a hoax. The assumption is that Haggard borrowed his plot from this experience (J.L.A.M 6). Haggard, the lawyer, crafts his fiction from a fiction created by legal professionals. In this way, his story originates in a space where the lines between law and literature are blurred. In addition, his fictional legal narrative comes under the scrutiny of the legal system following accusations of plagiarism. In the preface to the bound edition of *Mr. Meeson's Will* that was published after the Summer Number in the *Illustrated London News*, Haggard affirms that his plot had its origin in this trick played on the Chancery lawyer. This explanation arises in the context of accusations of *Mr. Meeson's Will* being plagiarized from a French tale, which Haggard reports that he has never even seen. According to Haggard, "tattooing stories, like most other tales, have for ages been the common property of the world" (xi). Altogether, the publication history of *Mr. Meeson's Will* represents the tensions between the literary and legal professions that are mirrored in the courtroom scene.

Upon their engagement, Eustace and Augusta share the goal of enforcing Mr. Meeson's will. Eustace retains the counsel of the Short brothers—James, a barrister, and John, a solicitor. Eustace's lawyers resemble Braddon's Robert Audley; indeed, Haggard chooses to craft detailed representations of lawyers lacking clients and legal briefs in his fiction. Significantly, a common occupation of a Victorian novelist was "called to the Bar; but never practiced." In this way, Haggard's legal fictional narrative performs the potential law career of the novelist, carving out a space for competing "law." James is depicted as being wedded to legal custom despite only having one client; he will only

meet with Eustace if his brother John, the solicitor, accompanies him, as barristers are not accustomed to meeting with clients. In addition, James is represented as unskilled in the actual practice of law, for when Eustace leaves to engage the solicitor, the barrister begins his earnest study of a book on wills borrowed from the counsel on the next floor. Haggard labels James and John as Tweedledum and Tweedledee. James's professional stature is so low that it becomes a "blessed sight" (84) to see his first client and first solicitor enter his chambers, even though they are his friend and brother.

Haggard's use of professionally undeveloped lawyers only gives the literary narrative more force—the will as a tattoo on the lady's back in Haggard's text astonishes the Short brothers, and they question whether or not she has "sufficient respect for the dignity of the law" (85). While contemporary reviewers called the tattoo plot "absurd," the few critical articles on *Mr. Meeson's Will* position Augusta's tattoo at the center of the text's significance. Feminist readings of the text alternately envision Augusta as a liberated and oppressed figure. Patricia Murphy, in her analysis of Augusta's tattoo, explores connections to "empire and otherness…sexuality and desexualization, as well as literal and figurative evidence of female commodification" (229). Garrett Stewart also reads the tattoo as a commodification, wherein Augusta as corporeal text of Meeson's will becomes a "farcical reduction" of the patriarchal standards of Victorian marriage (*Dear Reader* 159). If Murphy and Stewart read the tattoo as a destructive force to female identity, Kellie Holzer sees the tattoo as identity-building, arguing that if "we understand tattooing as an unstable technology of self-fashioning, we can read Augusta's tattoo as a generative condition" (Holzer). Augusta's tattoo, when read together with the

positioning of Lady Holmhurst as amateur lawyer, and the placement of the women in the jury box, allows for the self-fashioning that Holzer suggests.

Although the sketching of Haggard's legal plot may be based on the imaginings of another legal professional, his plot challenges the notion that common law can resolve all legal problems. For example, upon filing the will at the probate court, there is a discussion of the logistics of filing Augusta as a document and how she will "live in a cupboard, or in an iron safe with a lot of wills" (88). The satire performs the tensions between the literary and legal professions, as these legal imaginings force the legal professionals to act as outsiders in their own profession, unable to imagine possibilities beyond the common law. Haggard's literary plot fictionalizes the law, forging factual patterns that the inexperienced legal professionals do not have the imagination to grasp. In support of this reading, Michelle Allen-Emerson reads *Mr. Meeson's Will* as a novel about authorship. Haggard's biography includes conflict with Maxwell's and Cassell's publishing house, which Allen-Emerson finds reflected in the novel's treatment of "the tension between authors and publishers, the changing conception of literary property, and the emergence of the author as celebrity" (497) Stewart sees the "generic oddity" of the novel—the shift from shipwreck saga to courtroom drama—to suggest a deliberate move "from story to authorial operation" (163). Along similar lines, Cathrine Frank argues that "*Mr. Meeson's Will* insists that literature might supplement law by endorsing, affirming, and even outdoing it" (337).

In addition to using the law to forge a literary identity, Haggard engages with contemporary debates concerning the impartiality of the law. Both Frank and S. Brooke

Cameron focus on the law in *Mr. Meeson's Will*. Frank considers how Haggard's work engages with the debates surrounding the Victorian Wills Act of 1837, while Cameron argues that the novel is "a meditation upon contracts, both in terms of documents and also as a progressive force determining individuals' identities and relationships" (179). Beyond wills and contracts, *Mr. Meeson's Will* can be read as a meditation on the role of the jury. For example, *Mr. Meeson's Will* includes a discussion of how advocacy strategies are controlled by monetary concerns. James hopes to hire additional counsel to represent Eustace; however, a "man of weight and experience" (97) is expensive, and they do not have the means to retain such a lawyer. The narrative suggests the difficulty of this situation: "This was awkward, because success in law proceedings so very often leans towards the weightiest purse, and Judges however impartial, being but men after all, are more apt to listen to an argument which is urged upon their attention by an Attorney-General than on one advanced by an unknown junior" (97). In *Mr. Meeson's Will*, a judge hears Meeson's case in a bench trial, with no jury to hear the case. According to John, the case is fact-heavy and there is not much law in the case. Since the jury decides questions of fact not questions of law, its absence in this proceeding is felt with fuller force. One of the dangers of such juryless proceedings is a lack of impartiality by the judge. The concerns about judicial impartiality parallel those made in cases of libel; if the judge favors the government, then freedom of press is in jeopardy without the protections of the jury of common men. In the absence of a jury, the jury box is filled with "various distinguished individuals, including several ladies, who had obtained orders" (99).

The composition of the people sitting in the jury box but not serving as juror differs markedly from a standard jury, as women were prohibited from serving on juries and distinguished individuals would excuse themselves from jury service. In this way, Haggard encourages readers to consider how a jury might be improved with both of these categories of citizens. Indeed, Lady Holmhurst is continuously engaging with the law in the novel. For example, when Augusta returns to England, she must decide how to present Meeson's new will. Lady Holmhurst, who once had a cousin who she coached for his Bar examination, argues that if Augusta does not advertise the existence of the new will, she is "compounding a felony," as she is both stealing the will and not showing it to Eustace. In addition, Lady Holmhurst makes a pun on the term "*mesne* profits" (122) when Eustace's attorneys are negotiating the settlement offer. LeeAnne Richardson reads *Mr. Meeson's Will* as a novel wherein "male anxiety about the New Woman, female authorship, and authority is literalized" (68). Richardson sees the makings of a New Woman novel about an independent and successful author deteriorate into a sentimental romance, swashbuckling adventure and finally a courtroom drama (69). According to Richardson, Haggard makes Augusta the writer in his novel only to then wage an attack on her in the narrative. Arguing that "Haggard goes to great lengths to show that an independent woman cannot truly be happy," (70) Richardson does not consider the potential for female agency within the genre of courtroom drama.

As is so often the case with Trollope, Haggard represents lawyers in the aggregate as generally being dangerous unknown forces, while the power of the individual attorney

is harnessed by a nuanced literary portrait. At trial, the lawyers are indistinguishable from Dickens's descriptions of blood-thirsty mobs flooding the courtrooms:

> Just at that moment there came a dull roar from the passage beyond. The doors of the court were being opened. Another second, and in rushed and struggled a hideous sea of barristers. Heavens, how they fought and kicked! A maddened herd of buffaloes could not have behaved more desperately. On rushed the white wave of wigs, bearing the strong men who hold the door before them like wreckage on a breaker. On they came and in forty seconds the court was crowded to its utmost capacity, and still there were hundreds of white wigged men behind. It was a fearful scene. (*Mr. Meeson's Will* 102)

Indeed, the "white wave of wigs" is an animal, not an intellectual force—we learn that the reason most of these barristers are here is because there isn't work to do. As in Braddon's *Lady Audley's Secret*, Haggard constantly emphasizes the underemployed barrister, which creates a sense of disorder within the profession and destabilization within the novel. This representation of lawyers forming a stampeding herd reflects a cultural awareness of the lack of any code of professional responsibility for lawyers in the Victorian period.

The rise of the professionalization of the Bar coincides with discussions of the ethics of legal advocacy in Victorian novels. In keeping with the pattern of ridiculing the lawyer in the abstract and championing the individual attorney, Eustace's lawyer gives a bravura performance. James must argue against twenty three lawyers, because all of the

legatees under the former will require representation. In his depiction of the twenty three lawyers arguing for the former will, Haggard includes "a long man with a big wig…who writes novels, like [Augusta], only not half such good ones" (104). This merging of the legal and literary professional is significant, for Haggard's text is not only a meditation on the publishing industry but also an exploration of the ways both lawyers and writers forge narratives. At first paralyzed by nervousness, James is unable to address the court with an argument and rather begins by reading his pleadings. Although the judge and lawyers may be asked to refer to the pleadings during a trial, it is not customary to read from the pleadings themselves. The act of reading the pleadings aloud is a performance that does not move the trial forward or become part of the advocacy strategy; rather, it is more aligned with the literary act of reading for reading's sake. Through the act of reading aloud in a courtroom James seems to cross over into the world of literature; thus, it is no surprise that his initial opening remarks run nearly two hours and end on a literary note: "James ended his spirited opening by appealing to the Court not to allow its mind to be influenced by the fact that since these events the two chief actors had become engaged to be married, which struck him, he said, as a very fitting climax to so romantic a story" (107). James wins a verdict for Eustace and the tattooed will is admitted to probate; however, it is James's alignment with literary narrative that allows him to triumph, bringing this text back to its origins as a fiction about law dreamed up by lawyers. It is unsurprising that Haggard's novel closes with a scene of writing—Augusta at her ink table working on her next novel. In the competition between literary and legal discourse, Haggard's fictional legal narrative self-consciously positions literature as triumphant.

This dissertation has argued that it is important to identify the ways in which representations of the jury in literature accurately reflect the nuanced conversation about the jury occurring in legal treatises and the Victorian press. By establishing the extent to which a fictional legal narrative is informed by current legal controversy, one can then move to considering how shifts in an author's representations of the law reflect a shift in the legal culture. Additionally, evidence of serious engagement with the issues pertaining to a specific legal debate provides a foundation for the argument that authors use features of the jury as a vehicle for providing their own juryman's guidebook. In effect, Victorian novelists write "law," a fictional legal narrative that addresses ethical questions that common law or positive law has left ambiguous. Braddon, Collins, and Haggard engage with the law and its human repercussions in complex ways; therefore, one can see the merits of a law and literature methodology for igniting interest in lesser read or out of print novels. I would argue that it is important to analyze law in non-canonical works, as it shows the scope of the intersections between law and literature in this period. A non-lawyer, Braddon's engagement with the law cannot be explained through biography, opening interesting lines of future inquiry over the use of legal plots by other female authors such as George Eliot. Like Trollope, Braddon was known for her productivity; Victorian critics assumed that authors who wrote quickly were not worthy of serious study. I would argue that we see the conflicted nature of authors more clearly when they are prolific, for the texts themselves seem more of the moment, as opposed to carefully considered over time. For this reason, further study of Braddon's legal fiction, such as *Aurora Floyd* (1863) is warranted. If sensation novels had a primarily female audience,

then in these texts, the female audience is given a juryman's guidebook and asked to participate on the jury or even envision themselves in the jury box. These sensation novels are works of resistance in the way gendered identity is called into question with Valeria as the amateur appellate attorney, Beatrix in her position of dominance over her solicitor, and Augusta in her refusal to be ruled by the law of her publishing contract or the law tattooed on her body.

Afterword: Future Lines of Study

In *Trial by Jury*, Devlin argues that, **"**For all of the institutions that have been created by English law, there is none other [than the jury] that has a better claim to be called the privilege of the common people of the United Kingdom" (8). In developing an integrated literary and legal history of the Victorian jury, this dissertation explores public representations of the jury through nineteenth-century legal treatises on the jury, the press, and fictional legal narratives. The debate over the jury hinges upon questions of class and faith in communal processes; therefore, defining the jury's role in the second half of the nineteenth century is indispensable to understanding the English national character. By engaging in the legal controversy over the jury, Victorian authors write the law. Beyond social questions, the consideration of the novel's use of features of the jury, such as its role as "finder of fact" and its narrative silence, sheds light on the legal imagination of Victorian authors. Representations of juries in Victorian literature are significant because they are more than just a social commentary regarding the deep cultural anxiety over the future of the jury; representations of the jury engage questions of literary authority and reveal an essential component of Victorian novelists' literary artistry.

Beyond representations of the jury in Victorian novels, this project could be expanded to explore the jury as treated in other narratives. An 1859 article cites the following lines from William Pulteney's Ballad of "The Honest Jury" as one of the

versions oft-quoted when discussing the jury's power of overstepping the bounds of their duties:

> For Sir Philip well knows,
>
> That his innuendos
>
> Will serve him no longer in verse or in prose,
>
> Since twelve honest men have decided the cause,
>
> Who are judges of fact and judges of Laws. (“Trial by Jury,” *Law Magazine*, 341)

What is interesting about these lines is their instability; they are often quoted to elucidate the distinction between the role of judges and juries, with the last line altered to read, "Who are judges of fact, though not judges of laws" (345). For example, Lord Mansfield cites this version of the ballad in the case of *The King against William Davies Shipley, Dean of St. Asaph (1784)* to decide whether the jury is a judge of both law and fact in libel cases (Cooper 147). In 1850, C. H. Cooper examines the debate over the lines from Pulteney's Ballad. A note from Howell's *State Trials* contradicts the memory of Lord Mansfield and identifies the line as "judges alike of the facts and the laws" appearing in a 1754 pamphlet. In fact, Lord Campbell says that Lord Mansfield misquoted the lines "to suit his purpose, or from lapse of memory." Lord Campbell's interpretation is questioned by Cooper who finds the song as given in the fifth volume of the *Craftsman* as aligning with Lord Mansfield's recollection of the ballad (148). The history of what Lord Mansfield calls a "famous, witty, and ingenious ballad" demonstrates how ambiguities surrounding the law of the jury resonate not only in novels but also in ballads and plays.

Based on a humor magazine piece a failed barrister named W.S. Gilbert wrote in 1868, the operetta *Trial by Jury* (1875) ran for a two years with three hundred performances. A Gilbert and Sullivan production, *Trial by Jury* was staged as a jury trial of a breach of promise case. The first solo is by the usher, who urges the jurymen to "set aside...all kinds of vulgar prejudice"(23). Then the chorus echoes this proclamation, repeating several times "from bias free of every kind. This trial must be tried!" (24). Despite these instructions, as soon as the defendant enters the courtroom, the chorus of jurymen says, "Monster, dread our damages. We're the jury. Dread our fury" (25). The defendant protests that the jury has not yet heard the evidence, to which the jurymen respond by leaving the box and gathering around him to sing, "On the merits of his pleadings / We're entirely in the dark! Ha! ha! - ho! ho! (25). The jury's exiting of the box indicates a lack of control; in this case, the audience experiences the horror of the jury having decided against the defendant before the trial has begun. This fear of being judged arbitrarily by an infuriated jury would be a universal one that the playwrights appeal to, and one that was being discussed in both treatises and fictional legal novels, recalling the fears reflected in *A Tale of Two Cities*, wherein the man in the crowd at Darnay's English trial is ready to issue a guilty verdict without having heard the evidence. We learn that the judge was once a barrister and married a rich attorney's "elderly, ugly daughter" to get assigned lucrative cases at the Bailey and Middlesex sessions. Throughout *Trial by Jury*, the law is nothing but a commodity to be bought or sold; the barrister "threw over" his wife and still became a judge. The jury's oath is not sacred but a source of ridicule: "Oh, will you swear by yonder skies, / Whatever question

may arise, / 'Twixt rich and poor — 'twixt low and high, / That you will well and truly try" (28). The scene in which the jury takes its oath emphasizes the physicality of the jury; the visual gag is that the jury is crouched down in the box raising their hands, which alone are visible. The judge grows impatient over the court proceedings, instructing the barristers to "put [their] briefs upon the shelf," as he will marry the plaintiff himself (29). The commercial success of the play emphasized the sense of the jury as incompetent in the Victorian popular culture.

Although the cultural resonances of the jury can be found outside of novels, this project could also be expanded to consider other novels. While *A Tale of Two Cities* and *The Law and the Lady* discuss foreign justice systems, this project could be further developed to consider representations of the jury in literature from non-English authors. Comparative analyses could be conducted through an examination of representations of the jury in Sir Walter Scott's *Heart of Midlothian* (1818) and *Peveril of the Peak* (1823), Alexandre Dumas's *The Count of Monte Cristo* (1844), Victor Hugo's *Les Miserables* (1866), and Fyodor Dostoevsky's *Crime and Punishment* (1866) and *The Brothers Karamozov* (1879-80), just to name a few. My work on the afterlife of Trollope's legal fiction studies how literature is read and taught in American law schools; consequently, the most natural direction to develop this project would be through American literature.

The changing role of the jury in the nineteenth century could certainly be witnessed outside of England—the American jury also underwent transformation during this period. The jury system in the United States shared the popularity of Blackstone's jury; the lack of language protecting the civil right to jury trials was a sticking point in

drafting the federal Constitution. American justifications for the jury tended to center on a faith in the common man over the knowledge of legal experts. In fact, before 1850, there was broad support of the idea that in criminal jury trials, jurors should decide questions of law as well as questions of fact. However, the second half of the nineteenth century saw a radical change in jury practices. Questions of law were no longer put to the jury, and the American trial system evolved to include special and directed verdicts that increased the judge's discretionary role. As in England, shifts in the trial system reflected a diminished faith in the jury's competency. For these reasons, the study of the jury by law and literature scholars should be expanded to discuss representations of the jury in American novels, such as those by James Fenimore Cooper, Mark Twain and Constance Fenimore Woolson.

Cooper's *The Ways of the Hour* (1850) is not simply a novel including jury scenes in a murder trial; Cooper's narrative is obsessed with the deterioration of the American jury. In the Preface, Cooper writes,

> A strange indifference exists as to the composition of the juries. In our view, the institution itself, so admirable in a monarchy, is totally unsuited to a democracy. The very principle that renders it so safe where there is a great central power to resist, renders it unsafe in a state of society in which few have sufficient resolution to attempt even to resist popular impulses….It is certain that the juries are falling into disrepute throughout the length and breadth of the land. The difficulty is to find a substitute. As they are bodies holding the lives, property, and character of every

> member of the community more or less in their power, it is not to be supposed that the masses will surrender this important means of exercising their authority voluntarily, or with good-will. Time alone can bring reform through the extent of the abuses. The writer has not the vanity to suppose that anything contained in this book will produce a very serious impression on the popularity of the jury. Such is not its design. All that is anticipated is to cause a portion of his readers to reflect on the subject; persons who probably have never yet given it a moment of thought." (2)

Why does Cooper believe that his concerns about the jury will not resonate with the American public? The cultural power of American fictional legal narratives requires further study. It would be interesting to study Cooper's relationship with the law; he was not a legal professional, but rather a midshipman in the U.S. Navy. Twain's *Pudd'nhead Wilson* (1894) includes representations of the jury in the trial for the murder of Judge Driscoll, and the text raises the intersections of race and the criminal law. In Woolson's *Anne* (1880-81), Anne Douglas gives witness testimony in the Heathcote murder trial. After waiting six hours for a verdict from the "dreadful jury," the jury remained divided, and a new trial was ordered. *Anne* explores the jury's relationship to gender issues, as evidenced in this comment from Dexter to Anne: "This very evening, on the train, I heard a mechanic say, 'If the jurymen were only fine ladies, now, that Heathcote would get off yet'" (Fenimore 373).

On the subject of female authors, another direction for the expansion of this project would be to include a chapter on the works of George Eliot, as *Adam Bede* (1859)

and *Felix Holt* (1866) both contain detailed courtroom scenes. While there are books on Dickens and the law and Trollope and the law, there is not a book on Eliot and the law. Eliot is understudied by law and literature scholars; exceptions include Jan-Melissa Schramm's *Testimony and Advocacy in Victorian Law, Literature, and Theology* (2000) containing extensive analyses of *Adam Bede*, *Felix Holt* and *Romola* (1862) and Lisa Rodensky's treatment of *Middlemarch* (1874) and *Daniel Deronda* (1876) in *The Crime in Mind: Criminal Responsibility in the Victorian Novel*. With this range of novels receiving consideration in law and literature scholarship, it is surprising that a book on Eliot and the law has not been published. One of the challenges of including Eliot in this project is the difficulty of distinguishing her legal philosophy from her scientific, religious and political beliefs.

Another interest this project has ignited for me is the afterlife of fictional legal narratives in the legal community. My review of law review articles through the twentieth and twenty-first centuries has given me some insight as to how lawyers read literature, from Thomas Alexander Fyfe's glorification of Dickens to Francis Newbolt's re-writing of Trollope. There are all sorts of modern applications for which analyzing how lawyers read literature matters. For example, to claim judicial protection under the Fair Use Defense of the Copyright Act a secondary work must be transformative, not derivative. To decide whether secondary work such as fan fiction is transformative, lawyer-judges must analyze the literature. Unsurprisingly, there is no set standard for what causes a work to be "rise to the level of a transformative parody rather than an infringing and derivative unauthorized sequel," as famous decisions on *The Wind Done*

Gone (a sequel to *Gone with the Wind* (1936)) in 2001 and a sequel to *The Catcher in the Rye* (1951) in 2009 indicate. I believe a lot of great work remains to be done not only tracing the rhetoric of the law and literature movement but also using this analysis to comment on modern instances in which lawyer-judges are required to perform literary analyses.

Recent scholarship has found modern applications for a historical analysis of the relationship between legal and literary discourse. A fellow panelist's conference paper given on the benefits of voir dire in the United States made me consider how the English legal system's lack of voir dire magnifies the faith placed in every English citizen eligible to serve on a jury. It also caused me to think about narrative silences in the English system, for in the United States the voir dire questions posed to the jury to measure partiality are never without narrative weight--you cannot simply ask the question of what is your occupation or marital status without inviting the potential juror to generate a narrative. In these ways, I am able to envision how my work intersects with contemporary legal scholarship.

In analyzing the literary and legal discourse on the future of the jury in the Victorian period, this project has advocated for expanded use of the law and literature methodology. Using a law and literature methodology provides a unique lens through which to view an author's social and literary vision; yet, a survey of scholarship on law and literature in the Victorian period indicates an overreliance on the works of Dickens. Law and literature specialists need to grow the movement by incorporating non-canonical authors and out of print texts by canonical authors into their analyses. This dissertation

has focused on an area of law untreated by other law and literature scholarship. Law and literature scholars argue for an integrated legal and literary history; however, critical studies cluster around a few popular topics such as marriage, divorce, and the evidence used in criminal trials. Law and literature scholars must branch out to conduct studies on the analogous relationship between law and literature in other areas of the law. An excellent recent example of such scholarship is Clare Pettitt's study of intellectual property law, although more work is needed on the relationship of civil law and literature.

As part of the community of scholars working on law and the humanities, my pedagogical goal is to bring an interdisciplinary perspective to the undergraduate classroom. An undergraduate course on Trial by Jury in Victorian Fiction could consider works by Trollope, Dickens, Eliot and Braddon together with legal treatises on ideological justifications of the jury as well as the dark side of jury. Students would study representations of lawyers, judges, and juries in fiction and discuss how a trial raises questions of class, gender, education, democracy and identity formation. We would also examine the relationship between law and literature. I could also use my knowledge about jury trials to create courses on related topics such as capital punishment and the novel. Although most law schools offer courses in law and literature, the stated intention has shifted. Early courses discussed law and literature courses as a way to humanize future lawyers. Today the sense is that literature can fill in the gaps in how a law is functioning in society when the law has left it unrepresented. In this way, my scholarship on the jury aligns with the evolving appreciation of literature in the law school classroom.

Works Cited

Allen-Emerson, Michelle. "Adventures in the Marketplace with H. Rider Haggard: Author-Publisher Relations in *Mr. Meeson's Will*." *English Literature in Transition 1880-1920* 57.4 (2014): 497-518.

Anderson, Amanda. "Trollope's Modernity" *ELH* 74.3 (2007): 509-534.

apRoberts, Ruth. *The Moral Trollope*. Athens: Ohio UP, 1971.

Arkin, Marc. "Trollope and the Law." *The New Criterion* 26.2 (2007): 23-27.

Asimow, Michael and Richard Weisberg. "When the Lawyer Knows the Client is Guilty: Client Confessions in Legal Ethics, Popular Culture, and Literature." *Southern California Interdisciplinary Law Journal* 18 (2009): 229-258.

Austin, John. *Lectures on Jurisprudence or The Philosophy of Positive Law*. 1885; Whitefish: Kessinger, 2007.

Baker, J.H. *An Introduction to English Legal History*. London: Butterworths, 1971.

Baron, Jane. "The Rhetoric of Law and Literature: A Skeptical View." *Cardozo L. Rev.* 26 (2005): 2273-2282.

Baugham, Ronald. "Dickens and His Lawyers." *ALSA Forum* 6.2 (1982): 168-186.

Bentley, David. *English Criminal Justice in the 19th Century*. London: Hambledon, 1998.

Ben-Yishai, Ayelet. "The Fact of a Rumor: Anthony Trollope's *The Eustace Diamonds*." *Nineteenth-Century Literature* 62.1 (2007): 88-120.

Bourdieu, Pierre. *Homo Academicus*. Stanford: Stanford UP, 1988.

Braddon, M.E. *An Open Verdict*. Leipzig: Bernhard Tauchnitz, 1878.

---- *Lady Audley's Secret*. 1861-2; Oxford: Oxford UP, 2012.

---- *The Lawyer's Secret*. 1862; London: Hesperus Press Limited, 2009.

Brantlinger, Patrick. *The Reading Lesson: The Threat of Mass Literacy in Nineteenth-Century British Fiction*. Bloomington: Indiana UP, 1998.

Brougham, Henry. "Rights and Duties of Advocates." *Edinburgh Review* 64 (1836): 155-168.

Brown, Joseph. *The Dark Side of Trial by Jury*. London: William Maxwell, 1859.

Cameron, S. Brooke. "She Is Not a Lady, but a Legal Document": The Tattoo as Contract in *Mr. Meeson's Will*." *Studies in the Novel* 45.2 (2013): 178-197.

Carlton, W.J. "Dickens in the Jury Box." *Dickensian* 52 (1956): 65-68.

Clark, John W. *The Language and Style of Anthony Trollope*. London: The Language Library, 1975.

Clarke, G. Rochfort. *Unanimity in Trial by Jury*. London: Stevens and Norton, 1859.

Clemm, Sabine. *Dickens, Journalism, and Nationhood: Mapping the World in Household Words*. London: Routledge, 2010.

Cohen, William A. *Sex Scandal: The Private Parts of Victorian Fiction*. Durham: Duke University Press, 1996.

Coles, Robert. "Charles Dickens and the Law." *Virginia Quarterly Review* 59.4 (1983):564-86.

Collins, Philip. *Charles Dickens: The Critical Heritage*. New York: Routledge, 1996.

Collins, Wilkie. *The Law and the Lady*. 1875; New York: Penguin, 1999.

---- *The Woman in White*. 1859; New York: Penguin, 2003.

Connors, Linda E., MacDonald, Mary Lu. *National Identity in Great Britain and British North*

America, 1815-1851. New York: Ashgate, 2011.

Cox, Edward W. *The Advocate: His Training, Practice, Rights and Duties*. London: John Crockford, 1852.

Dallas, E. S. "*The Times*, 26 Dec. 1862." *Trollope The Critical Heritage*, Ed. Donald Smalley. London: Routledge, 1969. 160-163.

Devlin, Patrick. *Trial by Jury*. London: Steven & Sons, 1956.

Dickens, Charles. *A Tale of Two Cities.* 1859; London: Andrews UK, 2010.

---- "To be Taken with a Grain of Salt," *The Centenary Edition of the Works of Charles Dickens*. 1865; London: Chapman & Hall, 1911.

---- *A Christmas Carol*. 1843; Ed. Richard Michael Kelly. New York: Broadview, 2003.

---- *Bleak House*. 1853; New York: Penguin, 2003.

---- *Oliver Twist*. 1837; New York: Dover, 2002.

---- *The Pickwick Papers*. 1836; New York: Dodd, Mead & Co., 1944.

---- *The Uncommercial Traveler*. Boston: James R. Osgood & Co., 1873.

Dolin, Kieran. *Fiction and the Law: Legal Discourse in Victorian and Modernist Literature.* Cambridge: Cambridge UP, 1999.

Drinker, Henry S. "The Lawyers of Anthony Trollope." *Two Addresses Delivered to Members of the Grolier Club*. New York: Grolier Club, 1950.

Duke, Winifred. "Lawyers in Literature." *Juridical Review* 41 (1929): 1-39.

Forsyth, William. *History of Trial by Jury*. London: Parker, 1852.

Frank, Cathrine O. "Of Testaments and Tattoos: The Wills Act of 1837 and Rider Haggard's

Mr. Meeson's Will (1888)." *Law and Literature* 18.3 (2006): 323-342.

---- "Trial Separations: Divorce, Disestablishment, and Home Rule in *Phineas Redux*." *College Literature* 35 (2008): 30-56.

Friedman, Susan Stanford. "(Inter)Disciplinarity and the Question of the Women's Studies Ph.D.." *Feminist Studies* 24.2 (1998): 301-325.

Gardner, Simon. "Trashing with Trollope: A Deconstruction of the Postal Rules in Contract." *Oxford Journal of Legal Studies* 12 (1992): 170-194.

Garratt, Peter. *Victorian Empiricism: Self, Knowledge, and Reality in Ruskin, Bain, Lewes, Spencer, and George Eliot*. Cranbury: Rosemont, 2010.

Gedye, Nicholas. *Observations on Law Reform and On the Practice of the Courts of Law and Equity.* London: C.A. Noad, 1867.

Gest, John Marshall. *The Lawyers in Literature*. Ithaca: Cornell UP, 1913.

Googins, Robert. "*Bleak House* in Law School." *Approaches to Teaching Dickens's Bleak House, ed. John O. Jordan and Gordon Bigelow*. MLA: New York, 2008.

Gould, W.B. "Dickens and the Law." *Auckland U. L. Rev.* 1.78 (1967): 78-88.

"Grand Jury Powers." *Household Words* conducted by Charles Dickens May 16, 1857: 15.373.

Greene, Charles. *Trial by Jury and Local Self-Government*. London: H. Mitchener, 1865.

Griffiths, Devin. "The Comparative History of *A Tale of Two Cities*." *ELH* 80.3 (2013): 811-838.

Grossman, Jonathan. *The Art of Alibi: English Law Courts and the Novel*. Baltimore: The Johns Hopkins UP, 2002.

Haggard, Henry Rider. 1888; *Mr. Meeson's Will*, CreateSpace, 2014.

Hancher, Michael. "Grafting *A Christmas Carol*." *SEL* 48.4 (2008): 813-27.

Hanly, Conor. "The Decline of Civil Jury Trial in Nineteenth-Century England." *The Journal of Legal History* 26.3 (2005): 253-278.

Holdsworth, William. *A History of English Law*. London: Methuen, 1903.

Holdsworth, William Searle. *Charles Dickens as Legal Historian*. 1929; Clark: Lawbook Exchange, 2005.

Holzer, Kellie. "The Body Writes Back: Self-Possession in *Mr. Meeson's Will*." *Nineteenth-Century Gender Studies* 8.3 (2012).

Houghton,Walter E. *The Victorian Frame of Mind 1830-1870*. New Haven: Yale UP, 1957.

Houston, Gail Turley. "Mary Braddon's Commentaries on the Trials and Legal Secrets of Audley Court." *Beyond Sensation: Mary Elizabeth Braddon in Context*. Ed. Marlene Tromp, Pamela K. Gilbert, Aeron Haynie. Albany: SUNY Albany Press, 2000.

Husemann, Mary M. "Irregular Not Proven: The Problem of Scottish Law in the Novels of Wilkie Collins." *Victorian Newsletter* 116 (2009): 66-89.

"In The Matter of Dodson and Fogg, Gentlemen." *The Cornhill Magazine* Ed. James Payn 15.86 (1890).

Ivy, Randolph. "M.E. Braddon in the 1860s: Clarifications and Corrections." *The Library: The Transactions of the Bibliographical Society* 8.1 (2007).

J.L.A.M. "The Origin of Mr. Meeson's Will." *The Washington Post* 17 Sept. 1888.

Jacobson, Karin. "Plain Faces, Weird Cases: Domesticating the Law in Collins's *The Law and*

the Lady and the *Trial of Madeleine Smith*." *Reality's Dark Light: The Sensational Wilkie Collins*. Nashville: University of Tennessee Press, 2003.

James, Henry. "'Anthony Trollope' Partial Portraits." *Trollope: The Critical Heritage*, ed. Donald Smalley. London: Routledge, 1969. 525-545.

Jennifer Cornell and Graham Law. "Our Author": Braddon in the Provincial Weeklies." *Beyond Sensation: Mary Elizabeth Braddon in Context* Ed. Marlene Tromp, Pamela K. Gilbert, Aeron Haynie. Albany: SUNY Albany Press, 2000.

John, Juliet. "Introduction." *Dickens and Modernity*, Ed. Juliet John. Suffolk: DS Brewer, 2012.

Judge, Elizabeth F. "Law and the Victorian Novel." *A Companion to the Victorian Novel*, Ed. William Baker and Kenneth Womack. Westport: Greenwood, 2002.

Kendrick, Walter M. "*The Eustace Diamonds*: The Truth of Trollope's Fiction." *ELH* 46.1 (1979): 136-157.

Kincaid, James R. *Dickens and the Rhetoric of Laughter*. Oxford: Oxford UP, 1972.

---- "Foreword." *Beyond Sensation: Mary Elizabeth Braddon in Context.* Ed. Marlene Tromp, Pamela K. Gilbert, Aeron Haynie. Albany: SUNY Albany Press, 2000.

---- *The Novels of Anthony Trollope*. Oxford: Oxford UP, 1977.

Krueger, Christine L. *Reading for the Law.* Charlottesville: U of Virginia P, 2010.

Lacey, Nicola. "The Way We Lived Then: The Legal Profession and the 19th-Century Novel." *Sydney L. Rev*. 33 (2011):599-622.

Langland, Elizabeth. "Framing Women's Bodies in Braddon's Lady Audley's Secret." *Beyond*

Sensation: Mary Elizabeth Braddon in Context. Ed. Marlene Tromp, Pamela K. Gilbert, Aeron Haynie. Albany: SUNY Albany Press, 2000.

Ledger, Sally. "From The Old Bailey to Revolutionary France: the trials of Charles Darnay." *Charles Dickens, A Tale of Two Cities and the French Revolution*. Ed. Colin Jones, Josephine McDonagh and Jon Mee. New York: Palgrave, 2009.

Letter. *London Times* 24 Mar. 1853: 3.

Letter. *London Times* 11 Jan. 1860.

Lewis, Monica C. "Anthony Trollope and the Voicing of Victorian Fiction." *Nineteenth-Century Literature* 65.2 (2010):141-165.

Lobban, Michael. "Reforming the Nineteenth-Century Court of Chancery," *Law and History Review* 22.2 (2004): 389-427.

---- "The Strange Life of the English Civil Jury, 1837-1914." "*The Dearest Birth Right of the People of England": The Jury in the History of the Common Law*. Ed. Mcleod and Cairns. London: Hart, 2002. 173-216.

---- "'Old wine in new bottles': the concept and practice of law reform, c. 1780-1830." *Rethinking the Age of Reform.* Ed. by Arthur Burns and Joanna Innes. Cambridge: Cambridge UP, 2003. 114-135.

Lockwood, Frank. *The Law and Lawyers of Pickwick*. London: Roxburghe Press, 1894.

Longmuir, Anne. "The Scotch Verdict and Irregular Marriages: How Scottish Law Disrupts the Normative in *The Law and the Lady* and *Man and Wife*." *Wilkie Collins: Interdisciplinary Essays.* Ed. Andrew Mangham. Cambridge: Cambridge Scholars,

2009. 166-176.

Luban, David. "A Midrash on Rabbi Shaffer and Rabbi Trollope." *Notre Dame L. Rev.* 77 (2002). 889-924.

Maceachen, Douglad B. "Wilkie Collins and British Law." *Nineteenth Century Fiction* 5 (1950). 121-139.

Mandler, Peter. *The English National Character: The History of an Idea from Edmund Burke to Tony Blair*. New Haven: Yale UP, 2006.

Markey, Maureen E. "Charles Dickens' *Bleak House*: Mr. Tulkinghorn as a Successful Literary Lawyer." *St. Thomas L. Rev*. 14 (2002): 689-758.

Markwick, Margaret and Deborah Denenholz Morse, "Introduction." *The Politics of Gender in Anthony Trollope's Novels*. London: Ashgate, 2009. 1-8.

Mathew, Theobald. "Bardell v. Pickwick." *Law Quarterly Review* 34 (1918). 320-328.

McChrystal, Michael K. "At the Foot of the Master: What Charles Dickens Got Right About What Lawyers Do Wrong." *Or. L. Rev. 78* (1999): 393-424.

McMaster, R.D. *Trollope and the Law*. New York: St. Martin's, 1986.

Miller, Andrew H. *Novels Behind Glass: Commodity Culture and Victorian Narrative.* New York: Cambridge University Press, 1995.

Miller, D.A. *The Novel and the Police*. Berkeley: UC Press, 1989.

"Mr. Meeson's Will," *The Academy* 34.7 (1888).

"Mr. Meeson's Will," *The Dublin Review* 21.1 (1889).

“Mr. Trollope and the Lawyers.” *Trollope The Critical Heritage*. Ed. Donald Smalley. 1862;

London: Routledge, 1969. 156.

Mullen, R.D. "The Books of H. Rider Haggard: A Chronological Survey." *Science-Fiction Studies* 5 (1978): 287-95.

Murphy, Patricia. "In 'the Sumptuous Rank of the Signifier': The Gendered Tattoo in *Mr. Meeson's Will*." *Victorian Review: An Interdisciplinary Journal of Victorian Studies* (2009): 229-251.

Neely, Robert Donald. *The Lawyers of Dickens and Their Clerks*. 1938; Clark: Lawbook Exchange, 2007.

"New Books and Reprints." *Saturday Review of Politics, Literature, Science and Art* 67 (1888).

Newbolt, Francis. *Out of Court*. London: P. Allan & Co. 1925.

Oldham, James. *Trial By Jury The Seventh Amendment and Anglo-American Special Juries* New York: NYU Press, 2006.

"Orley Farm." *National Review* 31 Jan. 1863. *Trollope The Critical Heritage*. London: Routledge, 1969: 38.

Petch, Simon. "The Business of the Barrister in *A Tale of Two Cities*." *Criticism* 44.1 (2002). 27-42.

Peters, Julie Stone. "Law, Literature, and the Vanishing Real: On the Future of an Interdisciplinary Illusion." *Teaching Law and Literature*. Ed. Austin Sarat, Cathrine O. Frank, and Matthew Anderson. New York: MLA, 2011. 71-85.

Pionke, Albert. "Navigating 'Those Terrible Meshes of the Law': Legal Realism in Anthony

Trollope's *Orley Farm* and *The Eustace Diamonds*." *ELH* 77.1 (2010): 129-157.

Poovey, Mary. *Uneven Developments: The Ideological Work of Gender in Mid-Victorian England*. Chicago: U Chicago P, 2009.

Ram, James. *A Treatise on Facts as Subjects of Inquiry by a Jury.* London: W. Maxwell, 1861.

Reed, John R. "Law and Narrative Strategy in Wilkie Collins's *The Law and the Lady*." *Victorian Institute Journal* 36 (2008): 217-230.

"A review of *The Eustace Diamonds.*" *The Examiner* 16 Nov. 1872. *Trollope: The Critical Heritage,* Ed. Donald Smalley. London: Routledge, 1969. 371.

Richardson, LeeAnne. *New Woman and Colonial Adventure Fiction in Victorian Britain.* Gainesville: UP of Florida, 2006.

Rodensky, Lisa. *The Crime in Mind: Criminal Responsibility and the Victorian Novel*. Oxford: Oxford UP, 2003.

Rogers, Showell. "The Ethics of Advocacy." *Law. Q. Rev.* 15 (1899): 259-280.

Ronner, Amy. *Law Literature, and Therapeutic Jurisprudence*. Durham: Carolina P, 2010.

Roth, Alan. "He Thought He Was Right (But Wasn't): Property Law in Anthony Trollope's *The Eustace Diamonds*" *Stanford L. Rev.* 44 (1992): 879-95.

Russell, Frances Theresa. *Satire in the Victorian Novel*. London: Macmillian 1920.

"Saturday Review, 11 Oct. 1862." *Trollope The Critical Heritage*, Ed. Donald Smalley. London: Routledge, 1969. 143-145.

"Saturday Review, 5 Dec. 1857." *Trollope The Critical Heritage*. Ed. Donald Smalley. London: Routledge, 1969. 55-58.

Schneider, Wendie Ellen. "Perjurious Albion: Perjury Prosecutions and the Victorian Trial." *Law and History* Ed. by Andrew Lewis and Michael Lobban. Oxford: Oxford University Press, 2004. 346-392.

Schor, Hilary. "Novel of the 1850s: *Hard Times, Little Dorrit,* and *A Tale of Two Cities*." *The Cambridge Companion to Charles Dickens.* Ed. by John O. Jordan. New York: Cambridge, 2001. 64-77.

Schramm, Jan-Melissa. "The Anatomy of a Barrister's Tongue." *Victorian Literature and Culture* 32 (2004). 285-303.

Shaffer, Thomas. *On Being a Christian and a Lawyer*. Provo: Brigham Young UP, 1981.

Shapiro, Barbara J. *"Beyond Reasonable Doubt" and "Probable Cause": Historical Perspectives on the Anglo-American Law of Evidence*. Los Angeles: U of California P, 1991.

Siemann, Catherine. "Appellate Lawyers in Petticoats: Access to Justice in Wilkie Collins's *The Law and the Lady*." *Nineteenth-Century Gender Studies* 8.2 (2012).

Simon, William H. "The Past, Present, and Future of Legal Ethics. Three Comments for David Luban." *Cornell L. Rev.* 93 (2008): 1368-1392.

Sleigh, W. Campbell. *The Grand Jury System Subversive of the Moral Interests of Society*. London: S. Sweet, 1852.

Smalley, Donald. "Introduction." *Trollope The Critical Heritage*. London: Routledge, 1969.

"Spectator, 3 Jan.1874." *Trollope The Critical Heritage*. Ed. Donald Smalley. London: Routledge, 1969: 378-381.

Stapleton, J.W.. *The Great Crime of 1860 : Being a Summary of the Facts Relating to the Murder Committed at Road; A Critical Review of its Social and Scientific Aspects; And an Authorised Account of the Family; with an Appendix, Containing the Evidence Taken at the Various Inquiries*. London: Marlborough, 1861.

Stebbings, Chantal. *The Private Trustee in Victorian England*. Cambridge: Cambridge UP, 2001.

Stephen, George. *The Juryman's Guide*. London: Manning and Mason, 1845.

Stephen, James Fitzjames. "*A Tale of Two Cities*." *The Dickens Critics* Ed. George H. Ford and Lauriat Lane, Jr. Ithaca: Cornell UP, 1961.

Stephen, James Fitzjames. "The License of Modern Novelists." *Edinburgh Review* 106 (1857).

---- *A General View of the Criminal Law of England*. London: Macmillan,1863.

Stewart, Garrett *Dear Reader: The Conscripted Audience in Nineteenth-Century British Fiction*. Baltimore: Johns Hopkins UP, 1996.

Sweet, Matthew. "Foreword." *The Lawyer's Secret*. 1862; London: Hesperus Press Limited, 2009.

Symonds, Arthur. "On the Recordation of the Law." *Transactions of the National Association for the Promotion of Social Science*. London: Parker, 1858.

Talfourd, Thomas Noon. *Three Speeches Delivered in the House of Commons in Favour of a Measure for an Extension of Copyright*. London: Edward Moxon, 1840.

Taylor, Jenny Bourne. "Introduction." *The Law and the Lady*. New York: Oxford UP, 1999.

Taylor, Sydney. *A digest of the law and practice relating to the office of coroner.* London: H.

Cox, 1893.

Thayer, James Bradley. *A Preliminary Treatise on Evidence at the Common Law.* Boston: Little, Brown and Company, 1898.

"The Jury Torture." *The Examiner* 10 July 1858: 435.

The Newgate Calendar and The Divorce Court Chronicle. F. Farrah: London, 1872.

The Road Murder; Being a Complete Report and Analysis of the Various Examinations and Opinions of the Press on this Mysterious Tragedy. Fleet: London, 1860.

Tick, Stanley. "In the Case of *Bleak House*: A Brief Brief in Defense of Mr. Tulkinghorn." *Dickens Quarterly* 15 (1998). 210-216.

Towers, Joseph. *An Enquiry Into the Question, Whether Juries Are, or Are Not, Judges of Law, as Well as Fact.* London: J. Debrett, 1764.

"Trial by Jury." *Law Magazine and Law Review* 7 (1859): 318-322.

"Trial by Jury." *London Times* 20 Sept. 1856.

"Trial by Jury." *London Times* 21 Dec. 1858.

Trial by Jury: The Birth-right of the People of England. London: R. Hardwicke, 1865.

Trollope, Anthony. *An Autobiography*. 1853; Oxford: Oxford University Press, 2008.

---- *Barchester Towers.* Oxford: Oxford UP, 2014.

---- *Miss Mackenzie.* 1865; Cambridge: Cambridge Scholars Publishing, 2008.

---- *Orley Farm*. 1861; Oxford: Oxford University Press, 2009.

---- *Phineas Finn*. London: Tauchnitz, 1869.

---- *Phineas Redux*. 1874; Oxford: Oxford UP, 2011.

---- *The Eustace Diamonds.* 1871; Oxford: Oxford University Press, 2011.

---- *The Three Clerks*. 1857; Oxford: Oxford University Press, 1989.

Tromp, Marlene and Pamela K. Gilbert and Aeron Haynie. "Introduction." *Beyond Sensation: Mary Elizabeth Braddon in Context,* Ed. Marlene Tromp, Pamela K. Gilbert, Aeron Haynie. Albany: SUNY Albany P, 2000.

"Unanimity for Juries." *London Times* 25 Mar. 1847.

"Unsigned notice, *Saturday Review."*16 Nov. 1872. *Trollope The Critical Heritage*, London: Routledge, 1969. 360

"Unsigned notice, *Spectator."* 26 Oct. 1872. *Trollope The Critical Heritage*. London: Routledge, 1969. 372-373.

Vaughan, F.E. "Dickens and his Lawyers: A Literary Mystery that remains Unsolved." *ABAJ* 41 (1955). 595-598.

Wan, Marco "*Stare Decisis*, Binding Precedent, and Anthony Trollope's *The Eustace Diamonds*." *Reading the Legal Case: Cross Currents between Law and the Humanities*. Ed. by Marco Wan New York: Routledge, 2012. 205-217.

Weisberg, Richard H. *Poethics, and Other Strategies of Law and Literature*. New York: Columbia UP, 1992.

Weisberg, Robert "Law, Literature, and Cultural Unity: Between Celebration and Lament." *Teaching Law and Literature*. Ed. Austin Sarat, Cathrine O. Frank, and Matthew Anderson. New York: MLA, 2011. 86-97.

West, Robin "Literature, Culture, and Law at Duke University." *Teaching Law and Literature*.

Ed. Austin Sarat, Cathrine O. Frank, and Matthew Anderson. New York: MLA, 2011. 98-116.

White, James Boyd. *The Legal Imagination*. Chicago: U of Chicago P, 1985.

Willmore, Graham. *Is Trial By Jury Worth Keeping?* London: James Ridgway, Piccadilly, 1850.

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